

No. 13444

---

United States  
Court of Appeals  
For the Ninth Circuit.

---

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

PAPPAS AND COMPANY and FRESH FRUIT  
AND VEGETABLE WORKERS UNION  
LOCAL 78, and FOOD, TOBACCO, AGRICULTURAL  
AND ALLIED WORKERS UNION OF AMERICA,  
Respondent.

---

Transcript of Record

---

Petition for Enforcement of Order of the  
National Labor Relations Board

FILED

PAUL P. O'BRIEN



No. 13444

---

United States  
Court of Appeals  
For the Ninth Circuit.

---

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

PAPPAS AND COMPANY and FRESH FRUIT  
AND VEGETABLE WORKERS UNION,  
LOCAL 78, and FOOD, TOBACCO, AGRICULTURAL  
AND ALLIED WORKERS  
UNION OF AMERICA,  
Respondent.

---

Transcript of Record

---

**Petition for Enforcement of Order of the  
National Labor Relations Board**



# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer of Pappas & Co. to Petition for Enforcement of an Order of the N.L.R.B. and Request for Review of and to Set Aside Said Order .....	140
Appearances .....	1
Certificate of the National Labor Relations Board .....	128
Charge Against Employer .....	6
Charge Against Employer, First Amended ....	14
Charge Against Labor Organization or Its Agents .....	3
Charge Against Labor Organization or Its Agents, First Amended .....	16
Consolidated Complaint .....	9
Decision and Order .....	21
Exceptions to Intermediate Report of the General Council and Recommended Order .....	57
Affidavit of Feller, Chas. J. (Chuck) .....	60

	INDEX	PAGE
Exhibits, General Counsel's:		
No. 1-A—Charge Against Labor Organiza- tion or Its Agents . . . . .		3
1-C—Charge Against Employer . . . . .		6
1-I—Consolidated Complaint . . . . .		9
1-J—Order Consolidating Cases and Notice of Consolidated Hearing .		19
Intermediate Report and Recommended Order		40
Letter Dated April 18, 1951, Re Exceptions to the Intermediate Report . . . . .		66
Order Consolidating Cases and Notice of Con- solidated Hearing . . . . .		19
Order to Show Cause, Filed July 8, 1952 . . . . .		135
Order to Show Cause, Filed July 14, 1952 . . . . .		137
Order to Show Cause, Filed August 6, 1952 . . .		139
Petition for Enforcement of an Order of the National Labor Relations Board . . . . .		131
Proceedings . . . . .		68
Witnesses, General Counsel's:		
Hamilton, Theron		
—direct . . . . .		112
—cross . . . . .		120
Ramey, Virgil		
—direct . . . . .		84
—cross . . . . .		99
—redirect . . . . .		103
—recross . . . . .		106

**INDEX**

**PAGE**

Witnesses, General Counsel's—(Continued):

Ward, Boyce

—direct ..... 107

—redirect ..... 109

—recross ..... 110

Warkentine, John

—direct ..... 72, 110

Witness, Respondent's:

Crow, Herschel

—cross ..... 126

Statement of Points Relied Upon by the Board 134

Telegram Dated April 4, 1951, Re Exceptions  
to the Intermediate Report ..... 56





## APPEARANCES

A. NORMAN SOMERS,

Assistant General Counsel, National Labor Re-  
lations Board, Washington, D. C.,

For Petitioners, National Labor Relations  
Board.

CHUCK ERVIN,  
ROBERT H. BURKE,

Box 1678, El Centro, California,

ROBERT R. RISSMAN,

257 So. Spring St.,

Los Angeles, California,

For Respondents, Fresh Fruit and Vegeta-  
ble Workers Union Local 78, et al.

MOSS LYON & DUNN, By  
ARVIN H. BROWN, JR.,

For Respondent, Pappas & Co.

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
5780 S. UNIVERSITY AVENUE  
CHICAGO, ILLINOIS 60637  
TEL: (773) 837-3100  
FAX: (773) 837-3100  
WWW: www.chem.uchicago.edu  
E-MAIL: chem@uchicago.edu

United States of America  
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENTS

Case No.: 20-CB-159.

Date filed: 9/1/50.

Compliance status checked by: D.B.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of The National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor organization or its agents against which charge is brought

Name: Food, Tobacco and Agricultural Workers, Local 78, Duke Cunningham and Charles Feller.

Address: Salinas, California.

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section

(8b) subsections (1)(A), (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 5, 1950, said FTA and said Cunningham and Feller, as agents of FTA, did cause Pappas & Co. and Ham Hamilton, foreman of said company at Mendota, California, to discharge Virgil E. Ramey for the reason that said Ramey was a member of the undersigned union and said Ramey refused to pay dues or initiation fees to said FTA.

On or about August 7, 1950, said respondents caused the employer to refuse reinstatement to Virgil E. Ramey.

By the above acts and other acts, said respondents are interfering with the employees' right of self-organization as defined in Section 7.

3. Name of employer: Employer Members of Imperial Valley Shippers Labor Committee and Pappas & Co.
4. Location of plant involved (street, city, and state): Mendota, California.
5. Nature of employer's business: Packing Shed Operator.
6. No. of workers employed: Approx. 50.
7. Full name of party filing charge: United Fresh

Fruit and Vegetable Workers Local Industrial Union 78, CIO.

8. Address of party filing charge (street, city, and state): 1010 S. Broadway, Los Angeles, California. Tel. No. RI 7-5331.
9. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Signature of representative or person making charge:

By /s/ H. L. McNAMARA,  
CIO Representative.

Date: Aug. 31, 1950.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Received in evidence as General Counsel's Exhibit No. 1-A. February 8, 1951.]

United States of America  
National Labor Relations Board

**CHARGE AGAINST EMPLOYER**

Case No.: 20-CA-493.

Date Filed: 9/1/50.

Compliance Status Checked By: D.B.

**Important—Read Carefully**

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer Against Whom Charge Is Brought:

Name of Employer: Employer Members of Imperial Valley Shippers Labor Committee and Pappas & Co.

Address of Establishment (street and number, city, zone, and State): Mendota, California.

Number of Workers Employed: Approx. 50.

Nature of Employer's Business: Packing Shed Operator.

The above-named employer has engaged in and is

engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) :

On or about August 5, 1950, the Employer discharged Virgil E. Ramey. This discharge was at the request of Cunningham and Feller, representatives of Food, Tobacco and Agricultural Workers, Local 78, hereinafter called FTA for the reason that said Ramey was a member of the undersigned labor organization and said Ramey refused to join or become or remain a member of FTA.

At the time of said discharge there was no union shop agreement in effect covering the employees of the employer. That Pappas & Co. is one of the employers named in representation case number 21-RC-1232 now pending before the NLRB.

At all times since August 5, 1950, employer has failed and refused to reinstate said Virgil E. Ramey.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO.
4. Address (street and number, city, zone, and

State): 1010 S. Broadway, Los Angeles, California. Telephone No. RI 7-5331.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): Congress of Industrial Organizations.
6. Address of National or International, if any (street and number, city, zone, and State): Send copies of all correspondence to Robert R. Rissman, 257 South Spring Street, Los Angeles 12, California. Telephone No. MI 9708.
7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Date: 31st August 1950.

Signature of representative of person filing charge:

By /s/ H. L. McNAMARA,  
C.I.O. Representative.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Received in evidence as General Counsel's Exhibit No. 1-C, February 8, 1951.]



United States of America Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-CA-493

In the Matter of:

PAPPAS AND COMPANY

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, CIO

Case No. 20-CB-159

In the Matter of:

FRESH FRUIT AND VEGETABLE WORK-  
ERS UNION, LOCAL 78, AND FOOD, TO-  
BACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, CIO

CONSOLIDATED COMPLAINT

It having been charged by United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO, that Pappas and Company, herein called Respondent Company and Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, herein called Respondent Union, have each engaged

in and are now engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C.A., 141 et seq. (Supp. July, 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, as amended, Section 203.15, hereby issues this Consolidated Complaint upon the charges, duly consolidated pursuant to the provisions of Section 203.33 (b) of the Rules and Regulations, and alleges as follows:

### I.

Respondent Company is a California corporation engaged in the growing, packing, and shipping of cantaloupes, Persian melons, grain and cotton. Its ranches and packing sheds are located in and about the vicinity of Mendota, California. During 1949, Respondent Company purchased box shooks and other raw materials valued in excess of \$90,000, and in addition thereto, was party to a contract with the Union Ice Company for icing railroad cars, in which the products of Respondent Company were shipped, which services were provided for Respondent Company at a cost of approximately \$10,000. During 1949, Respondent Company sold cantaloupes and Persian melons valued at approximately \$450,000 of which approximately 75% was shipped by Respondent Company from Mendota, California, to places located outside the State of California. Dur-

ing 1949, Respondent Company's sales of grain and cotton amounted to approximately \$80,000 and \$100,000 respectively.

II.

Respondent Union is and at all times material hereto has been a labor organization within the meaning of Section 2, subsection (5) of the Act.

III.

On or about August 5, 1950, Respondent Union acting by and through its officers, agents and representatives caused Respondent Company to discharge Virgil E. Ramey, by requesting such discharge because he was not a member in good standing of said Respondent Union.

IV.

On or about August 5, 1950, Respondent Company, acting by and through its officers, agents and representatives, discharged Virgil E. Ramey, at the request of Respondent Union, because he was not a member in good standing of said Respondent Union.

V.

By the acts set forth in paragraph III above, Respondent Union did cause, and is causing Respondent Company to discriminate against said Virgil E. Ramey, in violation of Section 8 (a) (3) of the Act and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(b) (2) of the Act.

## VI.

By the acts set forth in paragraph III, above, Respondent Union did restrain and coerce, and is restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

## VII.

By the acts set forth in paragraph IV, above, Respondent Company did discriminate, and is now discriminating in regard to hire, tenure, terms and conditions of employment of Virgil E. Ramey, thereby encouraging membership in Respondent Union and discouraging membership in other labor organizations, and did thereby engage in, and is now thereby engaging in unfair labor practices within the meaning of Section 8(a) (3) of the Act.

## VIII.

By the acts set forth in paragraph IV, above, Respondent Company did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

## IX.

The acts of Respondent Company and Respondent Union as set forth in paragraphs III and IV,

above, occurring in connection with the operations of Respondent Company described in paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The aforesaid acts of Respondent Company as set forth in paragraph IV, above, and the aforesaid acts of Respondent Union as set forth in paragraph III, above, and each of them, constitute unfair labor practices within the meaning of Section 8 (a)(1) and (3) and Section 8(b)(1)(A) and 8(b)(2), and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 30th day of November, 1950, issues this Consolidated Complaint against Pappas and Company and Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, Respondents herein.

[Seal]      /s/ GERALD A. BROWN,  
Regional Director National  
Labor Relations Board.

[Received in evidence as General Counsel's Exhibit No. 1-I, February 8, 1951.]

United States of America  
National Labor Relations Board

FIRST AMENDED CHARGE AGAINST  
EMPLOYER

Case No.: 20-CA-493.

Date Filed: 11/28/50.

Compliance Status Checked By: E.L.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer whom Charge Is Brought:

Name of Employer: Pappas and Company.

Address of Establishment (Street and number, city, zone, and State): Mendota, California.

Number of Workers Employed: Approx. 50.

Nature of Employer's Business: Packing Shed Operator.

The above-named employer has engaged in and is engaging in unfair labor practices within the mean-

ing of section 8 (a), subsections (1) and 8 (a) (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) :

On or about August 5, 1950, the Respondent discharged Virgil E. Ramey at the request of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, because said Virgil E. Ramey was not a member in good standing in said Union.

By the above acts and by other acts and conduct, the Employer has interfered with, restrained and coerced its employees and is interfering with, restraining and coercing its employees in the rights guaranteed them by Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO.
4. Address (Street and number, city, zone, and State): 1010 S. Broadway, Los Angeles, California. Telephone No. RI 7-5331.
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): Congress of Industrial Organizations.

6. Address of National or International, if any (Street and number, city, zone, and State): Send copies of all correspondence to Robert R. Rissman, 257 South Spring Street, Los Angeles 12, California. Telephone No. MI 9708.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Date: 11-28-50.

Signature of representative of person filing charge:

By /s/ T. F. FLYNN,  
C.I.O. Regional Director.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

United States of America  
National Labor Relations Board

FIRST AMENDED CHARGE AGAINST  
LABOR ORGANIZATION OR ITS AGENTS

Case No.: 20-CB-159.

Date Filed: 11/28/50.

Compliance Status Checked By: E.L.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a



complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor Organization or Its Agents Against Which Charge Is Brought:

Name: Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America.

Address: Salinas, California.

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section (8b), subsection(s) (1) (A) (2), of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

On or about August 5, 1950, it by its officers, agents and representatives, caused Pappas and Company to discriminate against Virgil E. Ramey, an employee, by requesting the discharge of said employee in violation of the provisions of Section 8 (a) (3) of the Act.

By the above acts and by other acts and conduct, the Employer has interfered with, restrained and coerced its employees and is interfering with, restraining and coercing its employees in the rights guaranteed them by Section 7 of the Act.

3. Name of Employer: Pappas and Company.
4. Location of Plant Involved (Street, City, and State): Mendota, California.
5. Nature of Employer's Business: Packing Shed Operator.
6. No. of Workers Employed: Approx. 50.
7. Full Name of Party Filing Charge: United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO.
8. Address of Party Filing Charge (Street, City, and State): 1010 S. Broadway, Los Angeles, California. Tel. No. RI 7-5331.
9. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Date: 11-25-50.

Signature of representative or person making charge:

By /s/ T. F. FLYNN,  
C.I.O. Regional Director.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001).

Before the National Labor Relations Board  
[Title of Cause.]

**ORDER CONSOLIDATING CASES AND  
NOTICE OF CONSOLIDATED HEARING**

Amended charges, pursuant to Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et seq. (Supp. July, 1947), having been filed by United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO, in the cases stated in the caption hereof, being Cases Nos. 20-CA-493 and 20-CB-159, copies of which charges are hereto attached, and the undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

It Is Hereby Ordered, pursuant to Section 203.33 (b) of the National Labor Relations Board Rules and Regulations—Series 5, as amended, that these cases be, and they hereby are, consolidated.

You Are Hereby Notified that, pursuant to Section 10(b) of the Act, on the 5th day of February, 1951, at 10 o'clock in the forenoon, in the Civil Service Room, Room 4, U. S. Post Office Building, 2309 Tulare Street, Fresno, California, a hearing will be

conducted before a Trial Examiner of the National Labor Relations Board upon the allegations set forth in the Consolidated Complaint attached hereto, at which time and place the parties will have the right to appear in person or otherwise and give testimony.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Order Consolidating Cases and Notice of Consolidated Hearing to be signed by the Regional Director for the Twentieth Region on this 30th day of November, 1950.

[Seal]      /s/ GERALD A. BROWN,  
Regional Director National  
Labor Relations Board.

[Received in evidence as General Counsel's Exhibit No. 1-J, February 8, 1951.]

United States of American Before the National  
Labor Relations Board

Case No. 20-CA-493

In the Matter of

PAPPAS AND COMPANY

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, CIO.

Case No. 20-CB-159

In the Matter of

FRESH FRUIT AND VEGETABLE WORKERS  
UNION, LOCAL 78, AND FOOD, TOBACCO,  
AGRICULTURAL AND ALLIED WORK-  
ERS UNION OF AMERICA

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, CIO.

DECISION AND ORDER

On March 5, 1951, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Union had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the National Labor Relations Act, as amended, and recommend-

ing that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner, however, recommended that the complaint be dismissed as to the Respondent Company. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.<sup>1</sup>

The Board<sup>2</sup> has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations with the following modifications and additions:

The Trial Examiner recommended dismissal of the complaint insofar as it alleged that the Respondent Company had discriminated with regard to the hire and tenure of Ramey in violation of

---

<sup>1</sup>The General Counsel excepted only to that portion of the Intermediate Report relating to the dismissal of the complaint as to the Respondent Company. As no timely exceptions were filed to the findings and recommendations of the Trial Examiner with respect to the Respondent Union, such findings and recommendations are hereby affirmed.

---

<sup>2</sup>Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

Section 8 (a) (3) and (1) of the Act. While finding that Ramey had involuntarily relinquished his job, the Trial Examiner found that he did so not because of any act of the Company but solely because of the conduct of the Respondent Union in instigating a work stoppage which made Ramey's job untenable. Under these circumstances, the Trial Examiner declined to find any violation of the Act by the Company. We do not agree with the Trial Examiner's exoneration of the Company of responsibility for Ramey's loss of employment, but we find, contrary to the Trial Examiner, that the Company did discriminate with regard to Ramey's tenure of employment, thereby violating Section 8 (a) (3) and (1) of the Act. In so finding, we rely on the following considerations:

a. As found by the Trial Examiner, Ramey was hired on August 2, 1950, by the Company to replace Yokas, a member of the Respondent Union, who had been discharged that day for inefficiency. Ramey was also a member of the Respondent Union, but was delinquent in his dues. On Saturday, August 5, Ramey having refused to make up the arrears in his dues, the Respondent Union requested his foreman, Hamilton, to discharge him. Upon Hamilton's refusal, the Respondent Union called a work stoppage. During the stoppage Ramey again refused to pay his dues, and Hamilton, after advising him that the other employees refused to work with him, instructed him to take the afternoon off with pay, assuring him that in the mean-

time he would try to persuade the Respondent Union to let Ramey go back to work. Ramey thereupon left the plant and work was resumed.

However, Hamilton's subsequent efforts to settle the dispute between the Respondent Union and Ramey were unsuccessful. On August 6, a Sunday, Hamilton told Ramey that if he paid his dues he could go back to work, but Ramey refused. On the same day, Hamilton saw Yokas and instructed him to return to work as a replacement for Ramey, hoping that he might thereby placate the Respondent Union and eventually secure permission to reinstate Ramey at some future date.<sup>3</sup> Yokas reported for work the next morning. Ramey also came to the plant that morning, hoping that Hamilton would put him back to work.<sup>4</sup> However, when Ramey appeared, the other employees ceased their preparations for work. Thereupon Hamilton told Ramey, as found by the Trial Examiner, that the other employees would not work so long as Ramey was in the

---

<sup>3</sup>Hamilton testified, in effect, that he hoped that, in consideration of his rehiring Yokas, the Respondent Union would let Ramey go back to work "when the Persians started"—i.e. when work began on the Persian melons—about 10 days later.

---

<sup>4</sup>Ramey testified that he considered that he had been discharged on Saturday, August 5, but hoped that Hamilton "might see his mistake" and give him a chance to return to work. As found by the Trial Examiner, Ramey was accompanied on Monday morning by representatives of the charging Union.



plant, to which Ramey replied, "I'm getting off. I don't want to cause any trouble."<sup>5</sup>

Upon the foregoing evidence, we find that on August 5 the Respondent Employer laid Ramey off pending adjustment of his dispute with the Union over his failure to pay membership dues. It is clear from Hamilton's statements to Ramey on August 5 and 6, and the fact that on August 6 he rehired Yokas to replace Ramey, that it was Hamilton's intention not to recall Ramey unless and until that dispute was settled. As a result of Hamilton's statements, Ramey, himself, as already indicated, con-

---

<sup>5</sup>The Trial Examiner relied in part, at least, on this statement of Ramey's in finding that Ramey was not discharged but had quit his job. Although this statement might possibly be construed as indicating that while Ramey felt he was free to return to work if he was willing to risk the consequences, he elected not to do so, such a construction would be inconsistent with Ramey's own testimony that he considered himself to have been discharged on August 5, and came to the plant on August 7 only because he hoped that Hamilton would change his mind. (See footnote 4, above.) Under these circumstances, we cannot attach controlling significance to Ramey's quoted statement, as evidence of his employment status on August 7 or of his reasons for leaving the plant. Nor, unlike the Examiner, do we give controlling weight to Hamilton's subsequent statement, in response to an inquiry by a representative of the charging Union, that Ramey had not been discharged. This reply in our opinion reflected either Hamilton's intention to reemploy Ramey at some future date, if the Respondent Union permitted, or his natural reluctance to make any statement which might compromise his Employer in the event of litigation.

sidered that he was no longer employed after August 5. Viewed in this context, Hamilton's remark to Ramey on August 7 that the other employees would not work with him, could reasonably be construed to mean only that under the circumstances the Respondent Company was not in a position to offer Ramey further employment. Accordingly, we find, contrary to the Trial Examiner, that the Respondent Employer on August 5, laid Ramey off at the instance of the Respondent Union and on August 7 rejected his request for reinstatement because of the Union's continued adamant opposition to Ramey.<sup>6</sup> There is no evidence that the Respondent Employer thereafter made any effort to recall Ramey.

b. Assuming, arguendo, that the Respondent Employer did not in fact discharge Ramey or lay him off, but that, as found by the Trial Examiner, Ramey quit his job because it had been made untenable by the Respondent Union, we would nevertheless find that the Respondent Company violated Section 8 (a) (3) and (1) of the Act.

The Board has frequently held with judicial approval that an employer violates Section 8 (a) (3) of the Act when he knowingly permits the exclusion of an employee from the plant by any union or anti-

---

<sup>6</sup>We agree with the Trial Examiner that the Respondent Union's objections to Ramey were due solely to his dues delinquency.

union group.<sup>7</sup> Here, it is clear that the Company knew of the work stoppage by its employees and knew that such stoppages represented a protest against Ramey's presence in the plant. Under these circumstances, it was the duty of the Company to take effective action to assure Ramey that he would be protected in his right to remain at work. Not only did the Respondent Company fail to do this, but on the contrary, it indicated to Ramey its acquiescence in the Respondent Union's demand that Ramey leave the plant. In this manner the Company permitted the Union to arrogate to itself the Company's control over employment, and to secure the termination of Ramey's employment for discriminatory purposes.

Assuming, therefore, that Ramey was not actually discharged or laid off, but, with the knowledge of the Respondent Employer, quit his employment because of the demonstrations against him by the Respondent Union, we find that he quit under such circumstances as to establish a violation of Section 8 (a) (3) and (1) of the Act by the Company.

Under either view, we find that the Respondent Union caused the Company to violate Section 8 (a) (3) with respect to Ramey, and thereby violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

---

<sup>7</sup>E.g., *Brown Garment Manufacturing Company*, 62 NLRB 857; *Fred P. Weissman Company*, 69 NLRB 1002, enfd 170 F. 2d 952 (C. A. 6), cert. den. 336 U.S. 972; *N.L.R.B. v. Hudson Motor Car Co.*, 128 F. 2d 528 (C.A. 6); *Air Products Incorporated*, 91 NLRB No. 212.

## The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents, which are set forth in Section III of the Intermediate Report, as modified by the findings in this Decision and Order, occurring in connection with the operations of the Respondent Company, described in Section I of the Intermediate Report, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### The Remedy

Having found that the Respondent Company unlawfully discriminated with regard to Ramey's hire and tenure of employment and that such discrimination was caused by the Respondent Union, we find that both Respondents are jointly and severally liable for loss of wages incurred by Ramey as a result of such discrimination. However, in accordance with our practice, in view of the Trial Examiner's failure to recommend that the Respondent Company reinstate Ramey with back pay, the liability of the Respondent Company for back pay will be tolled with respect to the period from the date of the Intermediate Report to the date of the Order herein.

Accordingly, we shall order that the Respondents

jointly and severally make Ramey whole for loss of wages<sup>8</sup> incurred as a result of the discrimination against him from August 6, 1950, to the date of the Intermediate Report. We shall further require the Respondent Union above to make Ramey whole for any such loss of wages incurred between the date of the Intermediate Report and the date of this Decision and Order. In addition, both Respondents will be required jointly and severally to make Ramey whole for any such loss of wages suffered by him between the date of this Order and the date of Respondent Employer's offer of reinstatement, except that the Respondent Union's liability for back pay may be terminated by serving notice upon Ramey and the Respondent Employer that it has withdrawn its objection to the employment of Ramey. The Respondent Union shall not be liable for any back pay accruing after the expiration of five days from the date of such notice.

Back pay will be computed on the basis of the amount thereof accrued in each separate calendar quarter, in accordance with the formula established in *F. W. Woolworth Company*.<sup>9</sup>

We shall further order the Respondent Employer to offer immediate reinstatement to Ramey without

---

<sup>8</sup>Such loss of wages shall be measured by the amount of wages Ramey normally would have earned during the periods specified but for the discrimination against him, less his net earnings during such period. See *Crossett Lumber Company*, 8 NLRB 440, 497-8.

---

<sup>9</sup>90 NLRB No. 41.

prejudice to his seniority or other rights and privileges, and we shall direct the Respondent Union to notify the Respondent Employer and Ramey that it has withdrawn its objection to Ramey's employment.

### Conclusions of Law

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following conclusions of law:

1. Pappas and Company, the Respondent Employer is an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, the Respondent union herein, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By causing Pappas and Company to discriminate against Virgil Ramey in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By restraining and coercing employees of Pappas and Company in the exercise of their rights under Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Virgil Ramey, Pappas and Company has encouraged membership in the Respondent Union, in violation of Section 8 (a) (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, Pappas and Company has engaged in and is engaging in unfair labor practices in violation of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders:

1. That the Respondent, Pappas and Company, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, or in any other labor organization of its employees, by discharging any of its employees or discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

(2) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to Virgil Ramey immediate and full reinstatement to his former or a substantially equivalent position,<sup>10</sup> without prejudice to his seniority or other rights and privileges;

(2) Upon request make available to the National Labor Relations Board, or its agents, for examination and copying, all pay roll records, social security payment records, time cards, personnel records and reports, and all other records necessary for a deter-

---

<sup>10</sup>Reinstatement is to be offered to his former position whenever possible, and, if such position is no longer in existence, then to a substantially equivalent position. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.



mination of the amount of back pay due under the terms of this Order.

(3) Post at its plant at Mendota, California, copies of the notice attached hereto and marked Appendix A.<sup>11</sup> Copies of said notice, to be furnished by the Regional Director, for the Twentieth Region, shall be duly signed by the Respondent Employer's representative immediately upon receipt thereof and promptly posted and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(4) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

2. That the Respondent Union, Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, its officers representatives, agents, successors, and assigns shall:

a. Cease and desist from:

(1) Causing or attempting to cause Pappas and Company to discriminate against Virgil Ramey or

---

<sup>11</sup>If this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

any other employee, in violation of Section 8 (a) (3) of the Act.

(2) In any other manner restraining or coercing employees of Pappas and Company, its successors or assigns, in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

b. Take the following affirmative action which, the Board finds will effectuate the policies of the Act:

(1) Notify Virgil Ramey and Pappas and Company in writing that it has withdrawn its objection to the employment of Ramey.

(2) Post at its business office and wherever notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix B.<sup>12</sup> Copies of said notice, to be furnished by the

---

<sup>12</sup>If this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

Regional Director for the Twentieth Region, shall be duly signed by a representative of the Respondent Union, immediately upon receipt thereof, and shall be promptly posted and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material.

(3) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order what steps the Respondent Union has taken to comply therewith.

3. That the Respondent Pappas and Company, its officers, agents, successors, and assigns, and the Respondent Fresh Fruit and Vegetable Workers Union, Local, 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, its officers, representative agents, successors, and assigns shall jointly and severally make Virgil Ramey whole, in the manner set forth in the section of this Decision and Order entitled "The Remedy," for any loss of pay suffered as a result of the discrimination against him.

Signed at Washington, D. C., June 15, 1951.

[Seal]

NATIONAL LABOR  
RELATIONS BOARD.

JOHN M. HOUSTON,  
Member,

JAMES J. REYNOLDS, JR.,  
Member,

PAUL L. STYLES,  
Member.

James J. Reynolds, Jr., Member, concurring and dissenting in part:

I agree with my colleagues in their finding that the Respondent Union violated the Act. However, for the reasons set forth in the Intermediate Report, I would adopt the recommendation of the Trial Examiner and dismiss the complaint as to the Respondent Company.

Signed at Washington, D. C., June 15, 1951.

NATIONAL LABOR  
RELATIONS BOARD.

JAMES J. REYNOLDS, JR.,  
Member.

Appendix A

Notice to All Employees Pursuant to  
a Decision and Order

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not encourage membership in Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, or in any other labor organization, by discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will make Virgil Ramey whole for any loss of earnings he has sustained as a result of the discrimination against him.

We Will offer to Virgil Ramey immediate and

full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

All our employees are free to become, remain, or to refrain from becoming or remaining, members in good standing of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

Dated.....

PAPPAS AND COMPANY,  
Employer.

By.....,  
Representative Title.

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

## Appendix B

### Notice

To All Members of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, and to All Employees of Pappas and Company

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not cause or attempt to cause Pappas

and Company to discriminate against Virgil Ramey or any other employee, in violation of Section 8 (a) (3) of the Act.

We Will Not in any other manner restrain or coerce any employee of Pappas and Company in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

We Will make Virgil Ramey whole for any loss of earnings sustained by reason of the discrimination against him.

Dated.....

FRESH FRUIT AND VEGETABLE WORKERS UNION, LOCAL 78, AND FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA,  
Labor Organization.

By.....,  
Representative Title.

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

etable  
hacco,  
on of  
as and  
order  
oor Re-  
Pappas

United States of America  
Before the National Labor Relations Board  
Division of Trial Examiners

[Title of Causes.]

INTERMEDIATE REPORT AND  
RECOMMENDED ORDER

Statement of the Case

Upon amended charges duly filed by United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO, herein called the charging Union, the General Counsel of the National Labor Relations Board,<sup>1</sup> by the Regional Director of the Twentieth Region (San Francisco, California), issued his consolidated complaint dated November 30, 1950, against Pappas and Company, herein called the Company, and Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, herein called the respondent Union or FTA, alleging that the respondent Company and respondent Union had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and 8 (b) (2), respectively, and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and notice of hearing were

---

<sup>1</sup>The General Counsel and his representative at the hearing will be called the General Counsel; the National Labor Relations Board, the Board.



duly served upon the parties, and copies of the charges and amended charges were duly served upon the Respondents.

With respect to unfair labor practices, the complaint alleged in substance that the respondent Union violated Section 8 (b) (1) (A) and 8 (b) (2) of the Act by causing the respondent Company discriminatorily to discharge Virgil E. Ramey, its employee, and that the respondent Company violated Section 8 (a) (1) and (3) of the Act by its discriminatory discharge of the said Virgil E. Ramey.

Neither Respondent filed an answer.

Pursuant to notice a hearing was held at El Centro, California, on February 8, 1951, before William E. Spencer, the undersigned duly designated Trial Examiner. All parties were represented at and participated in the hearing where full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded them. **At the close of the hearing** all parties waived oral argument and the filing of briefs with the undersigned.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

### Findings of Fact

#### I. The business of the Company

Pappas and Company is a California corporation engaged in the growing, packing, and shipping of cantaloupes, Persian melons, grain and cotton. Its ranches and packing sheds are located in and about

the vicinity of Mendota, California. During 1949, the Company purchased box shooK and other raw material valued in excess of \$90,000, and in addition thereto, was party to a contract with the Union Ice Company for icing railroad cars, in which the products of the Company were shipped, which services were provided for the Company at a cost of approximately \$10,000. During 1949, the Company sold cantaloupes and Persian melons valued at approximately \$450,000, of which approximately 75 per cent was shipped by respondent Company from Mendota, California, to places outside the State of California. During 1949, the Company's sales of grain and cotton amounted to approximately \$80,000 and \$100,000, respectively.

It is found that the Company is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act for the Board to assert jurisdiction herein.<sup>1a</sup>

## II. The labor organizations involved

The respondent Union and the charging Union, respectively, are labor organizations within the meaning of Section 2 (5) of the Act.

## III. The unfair labor practices

### 1. The Facts

Virgil Ramey was employed by the Company on August 2, 1950, to replace James Yokas (referred to in the transcript at times as King) who had been discharged that same day. He was employed outside

---

<sup>1a</sup>Imperial Garden Growers, 91 NLRB 167.

the packing shed to dump melons from trailers as they were brought to the shed for sorting and packing. He testified that he had been a member of FTA, the respondent Union, for 8 to 10 years but admittedly was delinquent in the payment of his dues at the time he was employed by the Company.

On August 4, Chuck Feller, an organizer or business agent of FTA, approached Ramey while the latter was at work and asked to see his dues book. Ramey replied that he was not sure he had it but would look and see. Feller said he would be back the next day.

On the following day Ramey was approached while at work by Duke Cunningham, another business agent or organizer of FTA. Cunningham also asked to see Ramey's dues book and Ramey replied that he did not have it and that Feller had already spoken to him about it. That same afternoon Feller returned and when told by Ramey that he did not have his dues book asked Ramey if he was "paid up." Ramey admitted that he was delinquent. Feller replied that there were others delinquent and referred particularly to an employee named Sunny Ward. "Of course he is CIO and won't pay," Feller said. Ramey replied that he felt the same way Ward did, and indicated that he would not pay any further dues to FTA until an election had been held—referring, apparently, either to an election to determine bargaining representatives or a union shop election. This terminated the conversation.

Some thirty minutes later all the machinery in the packing shed was shut down. Ramey went, or was

called, into the shed where he observed that the packers had stopped working and that Cunningham, Feller, and Theron Hamilton, shed foreman, were engaged in conversation. Ramey approached this group and heard Feller say that one reason for the "shut-down" was that there was a man working outside who did not belong to FTA. Ramey asked Feller whom he was referring to and when Feller replied, "You," an argument followed in which Ramey called Feller a liar. Cunningham said that a check of union records showed Ramey a year and a half behind in his dues. A discussion of dues followed in which Ramey refused to pay up his delinquent dues. Finally, Ramey went outside the shed and a short time later the machinery started up and the packers resumed their work. Hamilton came out of the shed and told Ramey that the men refused to work until he was "off the shed," and instructed him to take the rest of the day off, promising to pay him for the full day's work. "I hope something will develop and you will go back to work over the week end," Hamilton told Ramey, and the latter replied, "O.K. if that is the way it is \* \* \* That is the way it has got to be." Ramey then left the plant.

On the following day, a Sunday, Ramey saw Hamilton in town and the latter asked him why he didn't go ahead and pay his delinquent dues. Ramey refused; refused, also, Hamilton's suggestion that he apologize for his part in the altercation of the previous day.

On the next day, a Monday, Ramey returned to

the packing shed accompanied by two representatives of the charging Union. The packers were putting their aprons on preparatory to going to work. When Ramey and his companions appeared, they left their work stations and began removing their aprons. Hamilton came over to Ramey and told him, "Well, the boys refuse to work while you are around the shed." Ramey replied, "I am getting off. I don't want to cause any trouble."<sup>2</sup> Ramey returned to the Company's plant thereafter only to pick up his pay check. He was given a full day's pay for the preceding Saturday when, at Hamilton's direction, he had left the plant before the end of the work day.

The foregoing findings of fact are based on Ramey's credible testimony which is in all important particulars consistent with Hamilton's testimony on the same events.

Hamilton testified that on the day that Ramey was employed, or the day following, Feller asked him why he had Ramey working there, that Ramey was not a union member, and suggested that he put Yokas back to work and let Ramey go. Hamilton refused. On Saturday, Feller again asked Hamilton to discharge Ramey and Hamilton again refused, stating that he believed it would be a violation of

---

<sup>2</sup>Ramey's testimony: "So then the packers came out from behind their dumps and took their aprons off and stood up in a bunch over there and Mr. Hamilton came over to us and he said, 'Well, the boys refuse to work while you are around the shed.' So I says, 'I am getting off. I don't want to cause any trouble.'"

the Act to do so. Later, Cunningham came into the shed and he and Herschel Crow, FTA shop steward, talked to the packers, after which the packers stopped work. Cunningham formally demanded that Hamilton discharge Ramey and put a "union man" in his place. Hamilton refused and Cunningham replied that the Company plant was going to be a "closed shop from here on out." Ramey was called in, and the altercation previously recited, took place.

Hamilton saw Feller on the following day, Sunday, and asked that Ramey be permitted to return to work. Feller replied that Ramey was "no good for the union" and refused to agree that Ramey go back to work.

Hamilton's version of what happened when Ramey returned to the packing shed on Monday is consistent with Ramey's own testimony, recited above.<sup>3</sup>

## 2. The issues; conclusions

The issues are (1) whether the respondent Company discriminatorily discharged Ramey and (2) whether the respondent Union caused or attempted to cause the Company to discharge Ramey in viola-

---

<sup>3</sup>Hamilton testified: "Ramey was present and the crew refused to go to work if he was on the job so Ramey told me 'If they don't want to work, well, I will leave, I will leave the shed, I won't cause any trouble.'"

tion of Section 8 (a) (3) of the Act.<sup>4</sup> No answers were filed to the complaint, but the evidence was taken and all issues were litigated at the hearing. The respondent Union's position at the hearing was that in seeking Ramey's discharge it was merely processing a grievance on behalf of Yokas who had been discharged by the Company and whose position was filled by the employment of Ramey.

It is clear from the mutually corroborative testimony of two credible witnesses, Ramey and Hamilton, that had Ramey been willing to pay up his delinquent dues in the respondent Union and maintain his allegiance to it, the respondent Union would not have sought his discharge. I credit Hamilton's testimony that Yokas' discharge was for cause and that the FTA acknowledged it was for cause, and that no attempt to prosecute a grievance in Yokas' behalf was made until the altercation between Ramey and the FTA over Ramey's payment of delinquent dues, had arisen.<sup>5</sup>

Admittedly, there had been no union shop election as provided for in the Act, and the respondent Union

---

<sup>4</sup>The complaint does not specifically allege the "attempt to cause" but inasmuch as "causing" implies an "attempt to cause" it is considered that the complaint is sufficiently broad to ground finding on the "attempt to cause" regardless of whether or not it be found that the discrimination actually occurred.

---

<sup>5</sup>Crow's testimony as a witness for the FTA was at variance with Hamilton's, but Crow was not an impressive witness and in all instances where his testimony conflicts with Hamilton's I have credited the latter.

therefore had no license to require Ramey's discharge because of his failure to maintain membership in good standing in the FTA. Its action in instigating a work stoppage in order to force the respondent Company to discharge Ramey was an "attempt to cause" the Company to discriminate against Ramey within the meaning of Section 8 (b) (2) of the Act, and the respondent Union thereby restrained and coerced the employees of the respondent Company within the meaning of Section 8 (b) (1) (A) of the Act.

I am unable, however, to find that the respondent Company discharged Ramey. Hamilton refused every demand made on him by representatives of the FTA to discharge Ramey and to reinstate Yokas in his place. He sent Ramey home on Saturday when the first work stoppage occurred but paid him for a full day's work, and told him that he hoped that it could be arranged for him to return to his job on the following Monday. In the interim he did what was normal and reasonable under the circumstance; i.e., attempted to get Ramey and the FTA to reconcile their differences in order that Ramey might resume his employment without further complications. When Ramey returned on the following Monday, and the packers again refused to work, Ramey left because he didn't "want to cause any trouble." When a representative of the charging Union, who had accompanied Ramey to the Company's packing shed on this occasion, asked Hamilton, "Is this man fired or discharged?" Hamilton replied, "He was neither."



This is not to say that Ramey voluntarily gave up his employment with the Respondent. Obviously, he did not. But his involuntary relinquishment of his job resulted not from any act of the respondent Company but from the coercive action of the respondent Union in promoting a work stoppage which made his retention of his job untenable.

I am aware that an employer who has himself engaged in unfair labor practices and by his own unlawful conduct has incited or encouraged hostility among his employees against one of their own number because of the latter's union affiliation or lack of it, owes a duty to that employee to enforce such discipline as is required to enable him to enjoy normal working conditions, but the respondent Company had engaged in no such unlawful conduct; on the contrary, it resisted every effort of the respondent Union to require it to effectuate an unlawful discharge. If Ramey had not volunteered to leave his employment rather than cause trouble, but had stood on his right to remain unmolested at his job, and the respondent Company had required him to leave or had refused to afford him such protection as was necessary to secure him in that right, a different situation might be presented, though it is difficult to see what the Company could have done short of closing down its plant. We do not have that situation, and in the situation that is presented by the facts of this case, it would seem to be an unwarranted and artificial concept of the Act's application to hold that the respondent Company interfered with, restrained and coerced its employees in the

exercise of the rights guaranteed by the Act. Nor does it appear to me that it would be in the public interest, or necessary in order to effectuate the policies of the Act, to require this Company to pay back pay, or any part of it, to an employee whose job was rendered untenable, not by its action but by action instigated and prosecuted by the respondent Union. Accordingly, I shall recommend that the complaint be dismissed insofar as it alleges that the Company engaged in unfair labor practices.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondent Union set forth in Section III, above, occurring in connection with the operations of the Company, described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Ramey having involuntarily left his employment with the Company because of restraint and coercion by the respondent Union, it will be recommended that the respondent Union notify Ramey and the Company that it has withdrawn its objection to the employment of Ramey by the Company, and make Ramey whole for any loss of pay he may have suffered by reason of the respondent Union's unlawful acts in causing him to leave his employment with

the Company, by payment to him of a sum of money equal to that which he normally would have earned as wages in the employment of the Company from August 6, 1950, to the date on which the respondent Union serves the notices aforesaid, less his net earnings,<sup>6</sup> if any, during such period. The back pay shall be computed in the manner established by the Board in *F. W. Woolworth Company*.<sup>7</sup>

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### Conclusions of Law

1. Pappas and Company is an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

2. Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, the respondent Union herein, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By attempting to cause Pappas and Company to discriminate against Virgil Ramey in violation of Section 8 (a) (3) of the Act, the respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By restraining and coercing employees of Pappas and Company in the exercise of their rights

---

<sup>6</sup>*Crossett Lumber Co.*, 8 NLRB 440, 497-98.

---

<sup>7</sup>90 NLRB No. 41.

under Section 7 of the Act, the respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. The respondent Company did not discriminate in regard to the hire and tenure of employment of Virgil Ramey, and did not interfere with, restrain and coerce its employees in the exercise of their rights under Section 7 of the Act.

### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, the undersigned recommends that Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, its officers, and agents shall:

1. Cease and desist from:

- (a) Restraining or coercing employees of Pappas and Company, its successors or assigns, in the exercise of their rights protected by Section 7 of the Act, except to the extent that such right may be effected by a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act;
- (b) Causing or attempting to cause Pappas and

Company to discriminate against Virgil Ramey or any other employee, in violation of Section 8 (a) (3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Notify Virgil Ramey and Pappas and Company in writing that it has withdrawn its objection to the employment of Ramey;

(b) Make Ramey whole for any loss of pay he may have suffered because of the respondent Union's restraint and coercion and attempt to cause Pappas and Company to discriminate against him, in the manner prescribed in Section V, above, entitled "The remedy";

(c) Post at its business office and wherever notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director of the Twentieth Region (San Francisco, California), shall be duly signed by a representative of the respondent Union, immediately upon receipt thereof, and shall be promptly posted and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the respondent Union to insure that such notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twentieth Region in writing within twenty (20) days from the date of receipt of this Intermediate Re-

port and Recommended Order what steps the respondent Union has taken to comply therewith.

It is further recommended that, unless the respondent Union shall within twenty (20) days from the receipt of this Intermediate Report and Recommended Order notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent Union to take the action aforesaid.

It is recommended that the complaint be dismissed as to the Company.

Dated this 5th day of March, 1951.

/s/ WILLIAM E. SPENCER,  
Trial Examiner.

### Appendix A

#### Notice

To All Members of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, and to All Employees of Pappas and Company:

#### Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not cause or attempt to cause Pappas and Company to discriminate against Virgil Ramey or any other employee, in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce any employee of Pappas and Company in the exercise of rights protected by Section 7 of the Act, except in accordance with the provisions of Section 8 (a) (3) of the Act.

We Will Make Virgil Ramey whole for any loss of earnings sustained by reason of the attempt to cause Pappas and Company to discriminate against him.

Dated .....

FRESH FRUIT AND VEGETABLE WORKERS UNION, LOCAL 78, AND FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA,  
(Labor Organization)

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

National Labor Relations Board  
N.L.R.B.

CMM:LK

4/4/51

Gerald A. Brown  
Director, NLRB  
San Francisco

Robert H. Burke & Chuck Ervin  
P.O. Box 1678  
El Centro, California

J. Warkentine  
- Mendota, California

Ken Gillie  
Brawley, California

Re: Pappas and Company, 20-CA-493 and 20-CB-159, Date for Receipt of Exceptions and Briefs in Washington Is Extended to April 16, 1951.

NATIONAL LABOR  
RELATIONS BOARD



Before the National Labor Relations Board  
Case No. 20-CA-439

April 15, 1951.

[Title of Causes]

Fresh Fruit and Vegetable Workers Union Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America,<sup>1</sup>

EXCEPTIONS TO INTERMEDIATE REPORT  
OF THE GENERAL COUNCIL AND REC-  
COMMENDED ORDER

The Respondent Union takes exception to the Intermediate Report of the General Council in its entirety, with respect to the testimony referred to, the testimony itself and numerous observations of the General Council in this case.

The Respondent Union contends that the material used in the observations of the General Council, lends credence only to testimony which is incidental and irrelevant to the issues at hand. The Respondent Union does not have copy of the transcript of the hearing proceedings, therefore the Intermediate report and the attached affidavit of Chuck Feller, will serve as the basis of this brief.

The affidavit of Chuck Feller indeed supports the testimony of Mr. Crow, who was the Shop Steward at the Company's operations. The Intermediate Report of the General Council rightfully states that Crow's testimony was at variance with Hamilton's. It further says that Crow's testimony was not im-

---

<sup>1</sup>Hereinafter referred to as the Respondent Union.

pressive; while, it says, the testimony of Hamilton and Ramey is credible. The Respondent Union resents the obvious implication in the Intermediate Report that the testimony of Crow was incredible.

The Respondent Union feels that the entire issue was closed, with the reinstatement of Yokus, which action would quite naturally result in the discontinuation of Ramey's employment. It has been clearly established that Ramey replaced Yokus and performed his exact job after Yokus was unjustly discharged, and in reinstating Yokus, he was placed back to his same job.

The Respondent Union wishes to point out that at no time has the Pappas Company made any allegations towards the Respondent Union on the matter. That the so-called work stoppage was of a few minutes duration, and in effect wasn't a work stoppage at all, but was a reflection of the feeling of other crew members. This is in itself testimony of the interest shown by the workers who strongly felt that if there ever was an unjust discharge, then this was it. Action by Hamilton against Mr. Yokus was a profound violation of principle, and a direct threat to the job security of every other worker under the employ of the Pappas Company.

The Respondent Union doesn't think that the few shifts which Ramey put in, allows any consideration as to reinstatement or seniority rights, as we can find no evidence whereby Ramey had ever worked for the Pappas Company prior to this incident, we feel that it is clearly established by Feller's affidavit, that he had no rights to the job at the time.

The Respondent Union thinks it would be wrong to compel the Pappas Company to give employment to Ramey, on the basis of the facts submitted. Since Mr. Yokus did leave the employ of the Company voluntarily, subsequent to his reinstatement, then the Pappas Company should be allowed to fill the vacancy at the start of the 1951 season in such manner as the Company may desire.

The Respondent Union feels that any consideration of an unfair labor practice on the part of the Respondent Union, or the Company, would be a gross stretch of imagination with respect to this particular case. On the other hand, it could be construed that Hamilton, the foreman, was guilty of unfair labor practices, not only by his bias to the Respondent Union but by his support and condolence of Ramey's actions throughout. The Respondent Union, having had remarkably good relations with the Pappas Company for some eight consecutive years and with the evidence strongly showing that Hamilton was acting independently of the Company's desires does not hereby make issue with the Pappas Company.

That Ramey did subsequently obtain employment with one or more other companies who were operating under the same Master Agreement with the Respondent Union, and was unmolested or in any way interfered with on such job is clear evidence that no discriminatory measures were taken against him by the Respondent Union.

In conclusion, the Respondent Union wishes to

re-emphasize the fact that the Intermediate Report is based upon testimony given by Hamilton and Ramey, which dealt only with argumentative conversation, which came as an aftermath of the real issue, "The Reinstatement of James Yokus, to his Rightful Job."

/s/ CHUCK ERVIN,  
Chairman.

### Affidavit

Re: Case No. 20-CA-493 & Case No. 20-CB-159.

I have read the Intermediate Report and Recommended Order of the above-mentioned Cases.

I was serving in the capacity of Business Agent for the Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America during the period the above-named case took place.

On August 2, 1950, the Shop Steward on the Pappas Packing Shed in Mendota, California, reported a grievance to me, on the Packing Shed. This particular grievance was presented to me as a discharge grievance, by Mr. Crow, Shop Steward. It has always been the Union's policy for the Shop Stewards to immediately report serious grievances directly to the Business Agents of the Union, provided said grievance could not be settled by an initial effort by the Steward.

Myself and Duke Cunningham, another Business Agent, went to the Pappas Shed the following day, Aug. 3, for the purpose of making an investigation

into the grievance. We found that one James Yokus had been discharged and was replaced by another worker, who, later, proved to be Virgil Ramey. The Shed foreman, Theron (Ham) Hamilton, would not give us the name of Ramey when we requested that information. Hamilton said Yokus was discharged for allowing a piece of lumber or a board to fall into the incline, which conveys the melons up into the processing shed. Hamilton said that this was the second time this had happened during the current season, and that Yokus was told after the first incident that if it happened again he, Yokus, would be fired.

At this point, myself and Cunningham made an investigation of the equipment with respect to the boards, which had fallen onto the incline. I barely touched one of the boards, which can more accurately be described as "sticks," and it dislodged and fell onto the conveyor. As a result of our findings we took the only position we could take: that the Company was using faulty equipment, and that the incident was no fault of Yokus. We informed Hamilton that Yokus was not discharged for just cause in our opinion, and we requested that Yokus be reinstated to his job. This request was refused by Hamilton, and he said he would quit as foreman before he would reinstate Yokus; at this point Hamilton went into a tirade of attacks upon our Union. I wish to emphasize the fact that our Union had a valid Contract with the Company containing grievance procedure, seniority provisions and "discharge for cause" clause.

Our investigation then led to Mr. Yokus, who was unemployed and awaiting the Union's handling of his case. Mr. Yokus told us that after the first incident he had suggested to Hamilton that the boards be attached with ropes or chains, so that when they would fall they would be prevented from going into the machinery. This helpful suggestion was shunned by Hamilton, and no effort was made to correct the faulty equipment. Yokus pointed out that great pressure was applied to the boards when the melons were dumped into the bins; the boards were the only means for keeping all the melons from going onto the conveyor at the same time. Yokus' job was to attend to the boards, about eight in all, covering the length of the bins. Yokus also pointed out that these boards had been used for several seasons and were worn, warped, cracked, etc.

Further investigation led us to get information on the worker who replaced Yokus. We found that his name was Ramey, and that he was a supporter of the opposing Union (CIO), as well as a personal friend of Hamilton. We found that he hadn't ever previously worked for the Pappas Company. To corroborate our findings we checked the Union's Master records in the Fresno Office, and although there were more than one "Ramey," none had paid dues to our Union since the CIO raid commenced early in 1950.

The next day, Aug. 4, Mr. Cunningham and I went to the Pappas Shed with the added information, and spent considerable time discussing the issue with Hamilton, whose position was unchanged

with respect to reinstating Yokus. I again requested the initials of Ramey and Hamilton again refused that information.

The following day, Sat., Aug. 5, Cunningham and I went to the Shed to discuss the grievance with Mr. Crow, the Shop Steward, and other members of the crew. I personally went out to talk to Ramey; I asked his full name for the record; he refused to give his name and, instead, threatened to "beat the h. . . . out of me." I went back onto the shed and reported my experiences with Ramey to Crow. Other interested packers began coming up to hear the discussion as they were by this time quite interested in this case. The result was soon nearly all of the packers were involved in the discussion and quite naturally production had ceased. No work stoppage was called by the Union. Then Mr. Geo. Pappas appeared. I personally explained the case to him. I gave a statement of position of the Union: "That Mr. Yokus was unlawfully discharged and that the Union requests his reinstatement." I advised Mr. Pappas that in the opinion of the Union, if this case were to run its course, the Company would be required to reinstate Yokus and pay him for loss of earnings. I told of Ramey's threat to do bodily harm to me.

Mr. Pappas' position was that he wanted no trouble and that if Ramey was a trouble maker, he didn't want to employ him. Pappas stated that he personally knew Mr. Yokus, who had worked previous seasons for him and that his work was always satisfactory, and that he couldn't understand

why he had been fired. At this time Hamilton took an opposite position and considerable argument took place.

About this time Ramey made his appearance; he began telling what a good union man he was, etc. This is when Mr. Cunningham and Ramey began to argue about dues standing. This incidental argument only appears to have been used in the testimony of Ramey and Hamilton, according to the Intermediate Report of the General Council.

It was known that other workers on the Pappas Shed were delinquent with their dues, yet the Union took no sanctions against them. The Union was aware that no Union Shop clause was affected by the Contract. Cunningham and Ramey engaged into considerable argument about dues standings, etc. But at no time was the question of dues standing the issue. Ramey then said he would "knock the h. . . . out of about fourteen of you guys," meaning the packers and Business Agents. This antagonized the packers who began agreeing among themselves that they would not work on the same job with Ramey. The foreman, Hamilton, made no effort whatsoever to alter Ramey's threats.

The next Morning, Sunday, Aug. 6 (the Pappas shed didn't operate that day), I was awakened by two men, Ken Gillie and one Crabtree, who presented themselves as CIO representatives. Their visit was most unfriendly. They said they had just come from Mr. Hamilton's house and that Ramey was going to be kept on the job in place of Yokus.

The CIO representatives were on the Shed the



next morning, along with Ramey. The packers took the position that they would not work while the CIO representatives were on the shed, since the FTA Union had contractual relations with the Company. Mr. Yokus was then reinstated to his former job and remained there toward the end of the season. I do not know why he eventually quit his job, but he had every right to do so. No grievance was made when he quit.

To my own knowledge and reference to my daily reports, this is an accurate accounting of the events which took place with respect to the above-named Cases.

/s/ CHAS. J. (CHUCK) FELLER.

State of California,  
County of Imperial—ss.

On This 16th day of April, A.D. 1951, before me, S. Aluescu, a Notary Public in and for said County and State, personally appeared Chas. J. (Chuck) Feller, known to me to be the person whose name ..... subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ S. ALUESCU,

Notary Public in and for Said  
County and State.

My Commission Expires Jan. 31, 1954.

Received April 18, 1951.

April 18, 1951.

Mr. Chuck Ervin

Fresh Fruit and Vegetable Workers Union, Local  
78, and Food, Tobacco, Agricultural and Allied  
Workers Union of America

P. O. Box 1678  
El Centro, California

Re: Pappas and Company, Cases Nos. 20-CA-493  
and 20-CB-159.

Dear Sir:

This is to notify you that the Board will not consider your exceptions to the Intermediate Report in this matter for the following reasons:

1. The exceptions are untimely. They were due originally on March 28, 1951. The time for receipt of the exceptions was extended to April 4, 1951, and later to April 14, 1951. No further extensions were granted. Your exceptions, received by the Board on April 18, were too late. See *The Ann Arbor Press*, 91 NLRB, No. 202, and *W. Hawley and Company*, 93 NLRB, No. 137.

2. Moreover, your exceptions failed to conform with requirements of Section 102.46 of the Rules and Regulations which specify that exceptions and briefs shall designate by precise citation of page and line the portions of the record relied upon.

3. Moreover, your exceptions are based at least in part upon an affidavit (attached to your excep-

tions) which is not part of the record in the case.

Very truly yours,

FRANK M. KLEILER,  
Executive Secretary.

cc: Mr. Warkentine

Mr. Magor

Mr. Gillie

Mr. Rissman

---

Before the National Labor Relations Board  
Twentieth Region

Case No. 20-CA-493

In the Matter of:

PAPPAS AND COMPANY

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, C.I.O.

Case No. 20-CB-159

In the Matter of:

FRESH FRUIT AND VEGETABLE WORK-  
ERS UNION, LOCAL 78, AND FOOD, TO-  
BACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA

and

UNITED FRESH FRUIT AND VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
78, C.I.O.

## PROCEEDINGS

Civil Service Examination Room, United States  
Post Office, El Centro, California, Thursday,  
February 8, 1951.

Pursuant to Notice, the Above-Entitled Matter  
Came on for Hearing at 10:00 A.M.

Before: William E. Spencer, Trial Examiner.

## Appearances:

ROBERT V. MAGOR,

512 Pacific Building,  
821 Market Street,  
San Francisco, California,

Appearing as Counsel for the General  
Counsel.

J. WARKENTINE,

Mendota, California,

Appearing on behalf of Pappas and  
Company.

KEN GILLIE,

Brawley, California,

Appearing on behalf of United Fresh  
Fruit and Vegetable Workers Union,  
Local Industrial Union 78, C.I.O.

CHUCK ERVIN,

Box 1678, El Centro, California,

ROBERT H. BURKE,  
El Centro, California,

Appearing on behalf of Fresh Fruit  
and Vegetable Workers Union Local  
78, and Food, Tobacco, Agricultural  
and Allied Workers Union of  
America.

\* \* \*

Mr. Magor: At this time, Mr. Trial Examiner, I would like to have marked for identification purposes, all the formal documents in this case. The original charge in Case No. 20-CB-159, filed on 9/1/50 we will mark for identification purposes General Counsel's 1-A. The affidavit of service of the original charge, with the return post office receipt attached thereto, will be marked for identification purposes as General Counsel's 1-B. The original charge in Case No. 20-CA-493, filed on 9/1/50, will be marked for identification purposes as General Counsel's Exhibit 1-C. The affidavit of service of the original charge in Case No. 20-CA-493, will be marked for identification purposes at General Counsel's Exhibit 1-D. The first amended charge in 20-CB-159, filed on 11-20-50, will be marked for identification purposes, as General Counsel's Exhibit 1-E. The affidavit of service of copy of the first amended charge of 20-CB-159, with the return post office receipts attached thereto, will be marked for identification purposes as General Counsel's Exhibit 1-F. The first amended charge in case No. 20-CA-493, filed on 11/28/50, will be marked for identifi-

cation purposes, as General Counsel's Exhibit 1-G. The affidavit of service of copy of the first amended charge in Case No. 20-CA-493, with return post office receipt attached thereto, will be marked [6\*] for identification purposes as General Counsel's Exhibit 1-H. The consolidated complaint, to which is attached a copy of the first amended charges, Case 20-CA-493, and Case No. 20-CB-159, issued on the 30th day of November, 1950, will be marked for identification purposes, as General Counsel's Exhibit 1-I. The order consolidating cases, and the notice of Consolidated Hearing, issued on the 30th of November, 1950, will be marked for identification purposes, as General Counsel's Exhibit 1-J. The affidavit of service of the Order Consolidating cases, and Notice of Consolidated hearing, consolidated complaint, and first amended charges, to which is attached the return post office receipts, will be marked for identification purposes, as General Counsel's Exhibit 1-K. The affidavit of service of a telegram changing the location and time of the hearing will be marked for identification purposes, as General Counsel's Exhibit 1-L. The confirmation copy of said telegram, which shows upon it the addressees, referred to in General Counsel's Exhibit 1-L, will be marked for identification purposes, as General Counsel's Exhibit 1-M. The affidavit of service of a telegram changing the time and location of the hearing, addressed to the United Fresh Fruit and Vegetable Workers, Local Industrial

---

\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Union 78, C.I.O., and Robert R. Rissman, 257 South Spring Street, Los Angeles, California, will be marked for identification purposes, as General Counsel's Exhibit 1-N. Confirmation copy of said telegram, showing [7] the addressees, referred to in General Counsel's Exhibit 1-N, will be marked for identification purposes as General Counsel's Exhibit 1-O. The affidavit of service of telegram sent to Charles Law, post office box 1678, El Centro, California, will be marked for identification purposes as General Counsel's Exhibit 1-P. The confirmation copy of said telegram to Charles Law, will be marked for identification purposes as General Counsel's Exhibit 1-Q.

May I take just a short recess for a moment?

(Thereupon the documents referred to were marked as General Counsel's Exhibits 1-A through 1-Q, for identification.) [8]

\* \* \*

Trial Examiner Spencer: The exhibits are received as offered by the General Counsel.

(The documents heretofore marked General Counsel's Exhibits 1-A to 1-Q for identification, were received in evidence.) [9]

\* \* \*

## JOHN WARKENTINE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Magor:

Q. Will you state your name and address for the record?

A. My name is John Warkentine, from Mendota, California, and the record I play there would be office manager.

Q. You say you are office manager. Who are you office manager for?

A. For Pappas and Company, Mendota.

Q. This case being brought, with Pappas and Company as Respondent, is that the correct and true name of the company?

A. That is the true name of the company.

Q. How long have you been office manager for Pappas and Company?      A. About four years.

Q. Can you tell me what type of a company it is. Whether [10] it is a partnership, a corporation, or an individual enterprise?

A. It is a California corporation.

Q. Who are the officers?

A. George Pappas, Gus Kavalos and Fay Fearon.

Q. What office does each of those individuals hold? Do you know?

A. Mr. Pappas is the president, and Gus Kava-



(Testimony of John Warkentine.)

los is I think the treasurer—no, I think the vice president, and Mrs. Fearon is the treasurer.

Q. Who are the stockholders of that corporation?

A. Those three are the stockholders.

Q. By those three, do you mean the individuals you previously testified to, is that correct?

A. Yes.

Q. What is Pappas and Company engaged in? What type of business?

A. They are engaged in farming, they grow melons, cotton and grain. We do have onions now.

Q. Are they engaged in any other business? Besides farming? A. No.

Q. Do they operate a packing shed?

A. Yes, they do.

Q. Where are the farm lands of the company?

A. The farm lands of the company are approximately between [11] six and nine miles southwest of the city of Mendota, Fresno County.

Q. And where is the packing shed of the company?

A. The packing shed is located in the City of Mendota.

Q. The city of Mendota, and the farm lands would be six to nine miles from the packing shed, is that correct? Is there any farm land around the packing shed itself? A. That they own?

Q. That they own. A. No.

Q. In other words, the packing shed is right in the city of Mendota? A. That is right.

(Testimony of John Warkentine.)

Q. Approximately how many acres are farmed by Pappas and Company?

A. Roughly around 3,500.

Q. And what products are grown on the farms of Pappas and Company?

A. We grow cotton, melons and grain.

Q. Cotton, melons and grain?

A. Those are the main crops.

Q. What products are packed through the packing shed of the company?      A. Melons.

Q. No cotton or grain goes through the packing shed, is that correct? [12]      A. No.

Q. Can you tell me approximately how many acres are used for growing melons by the company?

A. Roughly around seven or eight hundred acres.

Q. About seven or eight hundred acres. Can you tell me approximately the value of the farm lands of Pappas and Company?

A. It should be worth in the neighborhood of two hundred thousand, maybe better.

Q. Can you tell me approximately the value of the packing shed of the company?

A. Around twenty-five thousand.

Q. Were any improvements added to the packing shed during the year 1949 or 50?      A. Yes.

Q. And what improvements were added to that?

A. Well, electrical improvements, and in the sorting and stuff like that, there were some improvements made.

Q. Approximately what amount of money was expended for improvements and betterments?

(Testimony of John Warkentine.)

A. I should say about \$2,500.

Q. Then the value of the packing shed is about \$25,000? A. Yes.

Q. Does that include the shed itself? Or does that include the equipment? [13]

A. That includes all the equipment.

Q. Approximately what amount of money would you estimate? A. About \$10,000.

Q. Is there a spur track near the packing shed of the company? A. Yes, there is.

Q. By whom was the spur track built?

A. It was built by the S.P., but paid for by Pappas and Company.

Q. You say the S. P. Would you identify the S. P.? A. Southern Pacific Railroad.

Q. What was the approximate cost of that spur track? A. Around \$3,000.

Q. Are there any employees employed on the farm lands or the ranch of the company the year around? A. Yes.

Q. Approximately how many employees are employed? A. I would say roughly about 25.

Q. About 25. When are cotton, grains and melons grown on the farm lands? When does the season begin for planting?

A. Well, the grains naturally start in the fall of the year, whereas the melons and the cotton would start the latter part of March and April.

Q. That is the planting of the melons and cotton in March and April? [14] A. That is right.

(Testimony of John Warkentine.)

Q. The grain is in the fall?

A. That is right.

Q. What do you mean by that? September?

A. Not September. I would say from November on.

Q. From November on. What is the peak of the amount of all employees employed on the ranch?

A. Well, the peak would be roughly during the melon season which starts about the middle of July.

Q. About the middle of July. How many employees are employed on the ranch during the peak?

A. I would say roughly about 75.

Q. About 75 employees. Tell me exactly what the Company does in the growing of melons.

A. Will you explain just a little?

Q. Strike that. During the peak you employ about 75 employees, now are those employees of Pappas and Company?

A. Well, you take—there is a certain amount of labor there furnished by a contractor.

Q. You say a certain amount of labor is furnished by a contractor? A. That is right.

Q. When does this contractor furnish labor? Is that during the peak season?

A. That is during the peak season, yes. [15]

Q. You say during the peak the contractor furnishes some employees, is that correct?

A. That is right.

Q. And that is when you are growing melons? And what work is done by the contractor?

A. Well, the contractor, he does the hoeing,

(Testimony of John Warkentine.)

thinning, and cutting weeds, and maybe help in irrigation or something like that, a few of the men——

Q. He does the hoeing and thinning, is that it? Who does the picking of the melons?

A. He does the picking of the melons, too.

Q. The picking of the melons is done by the employees? A. That is right.

Q. Is that a verbal or written contract?

A. That is a verbal contract.

Q. You speak of 75 employees about that time——did you say about 75? A. That is right.

Q. Does that include the 25 you say work there the year round?

A. No, in most cases that would be in addition.

Q. That would be in addition to the 25, is that correct? A. Yes.

Q. Then the 70 or 75 employees are employed by the contractor, or are they employed by Pappas and Company? [16]

A. They are employed by the contractor.

Q. How is the contractor paid for his work?

A. The contractor himself is paid by the day, whereas his help is paid by the hour.

Q. Do you make any payment to his help, or Pappas and Company? A. No.

Q. In other words, you pay the contractor and the contractor in turn pays his employees, is that correct? A. That is true.

Q. And they do the actual picking of the melons in the field, is that correct?

(Testimony of John Warkentine.)

A. That is correct.

Q. During that period of time what do those 25 employees employed on the ranch do?

A. Well, we have got quite a few tractors—there is tractor work, irrigation, which never stops.

Q. Do you keep any payroll records of the contractor's employees?

A. Well, yes, naturally I check on his help, whatever he takes out there, to make sure that he don't slip up on something for the men under him.

Q. Do you keep payroll records of each man who is employed by the contractor?

A. No, we don't. [17]

Q. What do you mean by checking up?

A. Well, just how many men he furnishes for a day under that.

Q. Who does the hiring and firing of those men?

A. The contractor does, with the men.

Q. The contractor himself does, is that correct?

A. Yes.

Q. When does the packing shed begin its operations?      A. The middle of July.

Q. And when does it conclude its operation in packing melons?

A. Roughly about the middle or last of October.

Q. During the time when the packing shed is operating, what is done by the officers of the corporation? Do they spend any time in the shed or on the ranch? Can you explain that?

A. Yes. They are in both places, for that matter. Mr. Pappas he is in the shed the most of the time.

(Testimony of John Warkentine.)

Q. About what percentage of his time does he spend in the shed?

A. Well, I would say 75%.

Q. How about Mr. Kavalos?

A. He spends very little time in the shed; he comes in to report, but he is in the field.

Q. He spends his time at the farm lands of the company?      A. That's right.

Q. And Mr. Kavalos spends much of his time in the packing shed, is that right? [18]

A. Mr. Pappas.

Q. Mr. Pappas—pardon me. How about this Fay Fearon, does she spend any time in the——

A. No, she don't spend any time there.

Q. Either at the shed or at the farm?

A. That is right, no.

Q. Who manages the shed when it is in operation?

A. When the shed is in operation we have a man there by the name of Hamilton. T. H. Hamilton.

Q. What is T. H. Hamilton's business or occupation with the company?

A. He is the shed foreman.

Q. Is Hamilton known by any other name than T. H. Hamilton?

A. Well, they call him Ham Hamilton, a good deal.

Q. Is he commonly known as Ham?

A. That is right, commonly known as Ham.

Q. What employees are employed in the shed

(Testimony of John Warkentine.)

when it is in operation? The packing shed—what classifications?

A. Well, we have packers, sorters, truckers, loaders—that would just about cover it.

Q. Who assigns the individual employees in the packing shed to those respective classifications?

A. Well, Hamilton does that.

Q. That is the foreman of the shed?

A. That is right. [19]

Q. Does Mr. Hamilton exercise any authority over the employees, working on the ranch during the packing season?

A. Well, it would be small. He might contact the pickers once in a while, but that would be all—the picking contractor.

Q. He would see the picking contractor, is that right?

A. Yes.

Q. Does Ham Hamilton have the authority to hire and fire employees?

A. Yes, sir.

Q. During the year of 1950 and specifically the packing season of 1950 was Ham Hamilton the shed foreman?

A. Yes, sir.

Q. Does the company's command, by that I mean Kavalos, Pappas, or Ham Hamilton, hire or fire or direct the work of any of the contractor's men in the field?

A. Oh, yes.

Q. Who do they see? Do they see the contractor, or do they see the men?

A. They see the contractor.

Mr. Magor: Mr. Reporter, will you read the question?

(Record read.)



(Testimony of John Warkentine.)

The Witness: Oh, the contractor's men—no, he don't direct any of the contractor's men, if that is the way that is to be.

Q. (By Mr. Magor): Neither Pappas, Kavalos or Hamilton? A. No. [20]

Q. They see the contractor himself, is that correct? A. That is correct.

Q. Now, how are the melons brought to the packing shed? A. By truck and trailer.

Q. By trucks and trailers?

A. The trucks and trailers, the way we have been operating for the last two years, have been owned by the Vegetable Harvesting Company.

Q. Is that an independent company?

A. That is right.

Q. Where are they located?

A. San Bernardino.

Q. Do you buy the tractors, or do you rent them?

A. We rent them.

Q. Who employs the truck drivers?

A. We do, Pappas and Company?

Q. Do you pay the truck drivers yourselves?

A. That is right.

Q. They are kept on the payrolls of the company? A. Yes.

Q. Approximately how many employees do you employ in the packing shed during the packing season?

A. I would say roughly around 60, maybe a few more.

(Testimony of John Warkentine.)

Q. About 60. And when is the peak reached in the packing shed? [21]

A. Well, common the peak would be right roughly in about August.

Q. About August. Now, Mr. Warkentine, if I understand your testimony correctly, the only products, that are packed by the company are the melons. Is that correct? A. That is right.

Q. Can you briefly explain for me just what is done with the melons from the time it reaches the shed until it is packed—the operation of the company at the packing shed?

A. Well, when the melons reach the shed in these trailers, they are then unhitched and they have got what they call a little tractor there and they pull the trailers to the unloading point there and then the side is opened and the melons roll onto a conveyor belt which conveys them into the shed to the sorters; from the sorters it goes to the packers, and from the packers to the lidding machine and down the conveyor and they are taken off the conveyor there, and the lidders and truckers pick it up and load.

Q. You say it comes into the sorters. What do the sorters do with the melons?

A. They sort the melons, and if there is any bad ones on the table there, they are culled out.

Q. And then they are delivered to the packers; what do the packers do?

A. They pack the melons in the crates. [22]

Q. And what is done after it is put in a crate?

A. It is put on a conveyor and goes to the ligger.

(Testimony of John Warkentine.)

Q. And the lid is put on the crate, is that correct?  
A. That is right.

Q. What type of melons do you run through the shed?

A. We run cantaloupes and Persian melons [2] through.

Q. Is there any washing done on the melons all?  
A. No. No washing.

Q. Anything done to the melons? A. N

\* \* \*

Q. Approximately what was paid the Union I Company for icing railroad cars? During the year 1949?  
A. Around \$10,000.

Q. Was that paid by Pappas and Company?

A. That was paid by Pappas and Company.

Q. Where are the railroad cars iced?

A. Some of the cars are iced right at the shed but now and again they are pulled out to the team track and iced on the team track.

Q. Where is the team track located—how far from the shed?

A. I would say maybe 100 or 200 yards.

\* \* \*

Q. What was the value of the melons sold during the year 1949? Approximately?

A. Approximately between four hundred and four hundred and fifty thousand dollars. [24]

Q. Of that four hundred or four hundred fifty thousand dollars, what percentage was shipped by Pappas and Company to places outside the State of California?

A. Well, offhand, I would say 75 per cent, maybe a little higher. [25]

\* \* \*

(Testimony of John Warkentine.)

Q. Does the company make any purchase of melons from any other grower? A. No.

Q. They receive their melons only from the land that is owned by them, is that right?

A. That is right.

\* \* \*

Q. For the purpose of the record, can you tell me size of the packing shed is?

A. It is 60x200.

Q. Can you tell me what type of equipment is used in the packing shed?

A. It is all electrified equipment.

Q. Would you explain what equipment you use?

A. Well, it consists of conveyors, belting, rollers, lidding machines, crate racks, bins, elevators—

\* \* \*

### VIRGIL RAMEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Magor:

Q. Would you state your name for the record, please.

A. Virgil Ramey, 276 "A" Street, Brawley.

Q. What is your business or occupation?

A. I work for the Richman, Justman, Frankenthal Company, at Brawley.

Q. Where is that—Brawley? Is that a city in California? A. Yes, sir.

Q. Were you ever employed by Pappas and Company? A. Yes, sir.

Q. When were you first employed by that company? A. In August, the 2d of August, 1950.

(Testimony of Virgil Ramey.)

Q. And at the time you were employed by Pappas and Company, where were you employed?

A. I was dumping trailers.

Q. Where? A. Up in Mendota.

Q. In Mendota. Is that the packing shed of the company? A. Yes.

Q. When you were first employed by the company, who employed you? [28]

A. Mr. Hamilton. Ham Hamilton.

Q. Ham Hamilton? The shed foreman for Pappas and Company? A. Yes.

Q. What did Mr. Hamilton have to say to you when he first employed you?

A. He said he needed a man to dump melons, and wanted to know if I would like to do that until the other work started. I told him I would be glad to. He told me to come out that evening and go to work.

Q. You were dumping melons when you were first hired on August 2, 1950? A. Yes.

Q. Where, with reference to the packing shed, were you working? A. It was outside.

Q. What do you mean by outside?

A. Well, they bring the trailers up to that particular point on the outside of the shed where they roll them off up an incline to go to the sorters.

Q. You were outside the shed, is that correct?

A. Well, it is part of the shed—it is in the open. It is not in the shed.

Q. Were you a member of any labor organization

(Testimony of Virgil Ramey.)

when you went to work for Pappas and Company?

A. Yes, sir. [29]

Q. What labor organization were you a member of?

A. F. T. A.

Q. How long had you been a member of the F.T.A., to the best of your recollection?

A. Oh, about eight or ten years.

Q. At the time that you went to work for Pappas and Company had you paid your dues to the F.T.A.?

A. I was paid at the time, but I was delinquent at the time.

Q. How many months or how long had you been delinquent?

A. Well, possibly six months, two quarters.

\* \* \*

Q. (By Mr. Magor): What were the positions of Chuck Feller and Duke Cunningham, in August, 1950, with the FTA?

Mr. Ervin: They were organizers and business agents.

Mr. Magor: Organizers and business agents—is that for the Fresh Fruit and Vegetable Workers Union Local 78, FTA?

Mr. Ervin: Yes.

Mr. Magor: And you will so stipulate, they were organizers and business agents during the month of August, 1950?

Mr. Ervin: That is right.

Mr. Magor: I will accept the stipulation. [30]

(Testimony of Virgil Ramey.)

Q. (By Mr. Magor): Do you, Mr. Ramey, know Chuck Feller and Duke Cunningham?

A. Yes.

Q. During the time you were working for Pappas and Company did you have any conversation with either Duke Cunningham or Chuck Feller?

A. Yes, with both.

Q. When did you first have a conversation with either of those two gentlemen?

A. The first with Chuck Feller was August 4.

Q. August 4. Where were you at the time you had this conversation with Chuck Feller?

A. I was on the job.

Q. You were on the job.

A. Dumping melons.

Q. That is at Pappas and Company?

A. Yes.

Q. What time of day was it?

A. Well, it was approximately eleven o'clock in the morning. It was before lunch.

Q. Did Chuck Feller approach you or did you approach him? A. He approached me.

Q. Was anybody else present at the time?

A. Well, there was a boy driving the bug—he was going back and forth. [31]

Q. Do you know the boy's name? A. No.

Q. Can you tell me to the best of your recollection the conversation that occurred at that time? As to what Chuck Feller had to say and what you had to say?

A. Well, Chuck came up first and said, "Ramey,

(Testimony of Virgil Ramey.)

we had a book inspection the other day, that was before you started." He said, "Have you your book with you?" I said, "I am not sure I've got it, Chuck, or not, but I will look and see." He said, "You do that, and I will be back tomorrow." I said, "All right," and he turned and left.

Q. Did that conclude the conversation?

A. That concluded the first time.

Q. When was the next time you had a conversation, either with Chuck Feller or Duke Cunningham?

A. Well, the next day Mr. Cunningham came up first.

Q. That would be the day following this conversation with Chuck Feller?

A. That was the 5th.

Q. The 5th of August?

A. August 5th, when Duke Cunningham came there.

Q. Where were you at the time Duke Cunningham came there?

A. Right on the Pappas shed, dumping melons, also. [32]

\* \* \*

Q. (By Mr. Magor): Will you give me to the best of your recollection the conversation that occurred at that time, as to what you had to say and what Mr. Cunningham had to say?

A. Well, he just came up and said, "I am Mr. Cunningham. I am a representative of the F.T.A. and I would like to check your book." I said, "I



(Testimony of Virgil Ramey.)

haven't got my book. Chuck told me to look for it yesterday." I said, "He is coming back this morning to talk to me."

Trial Examiner Spencer: When you say "book," you mean your dues book, do you sir?

The Witness: That is right. Yes, sir. And he had a piece of paper with a list of names on it, and he looked on that paper and pretty soon he says, "Oh, yes, I see," and turned and walked away. That was the conversation.

Q. (By Mr Magor): That was all the conversation, then?

A. With him, at the time, yes. [33]

Q. Did you see him after that?

A. Inside the shop.

Q. Tell me what you did when he walked away?

A. I went back to work then.

Q. Then what occurred?

A. Then that afternoon Chuck came over.

Q. Who is Chuck? That is Chuck Feller?

A. Mr. Feller, and asked me if I had found my book. I says, "No, I didn't have it." He says, "Well, are you paid up?" I says, "No, I am delinquent." He said, "Well, it don't make any difference, a lot of the boys in the shed are that way too, they were going to pay up payday." I said, "Who all in the shed here is paying up?" So he showed me a paper with some names on it and he says, "Here is the packers, they are 100% F.T.A., they are 100% paid up now. Here is Sunny Ward, he is behind. Of

(Testimony of Virgil Ramey.)

course he is CIO and won't pay." I said, "I feel the same way he does about the FTA-CIO." He said, "It doesn't make any difference what you say as long as we get our dues." I said, "I have been hearing around here that we are not supposed to pay dues until the election is over." I said, "I don't think I will pay anybody until I hear that, and when that comes, I will pay everybody I owe every penny." He says, "Well, we have the book." I said, "All right, well, I have been told like everybody else has, not to pay anything." So he turned and walked away. [34]

Q. What occurred then?

A. Well, then I would say thirty minutes after that, everything shut down—all the machinery, and was quiet, so I asked this kid driving the bug what happened inside. He says, "I don't know. Why?" I said, "There is nothing running." He says, "Let's go see." So we both went in.

Q. Did you—where did you go when you went in?

A. Inside the shop.

Q. Who was present at the time you went inside the shop?

A. Well, there was Mr. Cunningham, Mr. Feller, and of course Mr. Hamilton—was all up in a big bunch.

Q. Were the workers working?

A. No, they was all standing there.

Q. Now, will you tell me to the best of your recollection what was said at that time and who said it?

A. As soon as I got in, the first one that I met

(Testimony of Virgil Ramey.)

was Mr. Feller. He said, "Well this is the reason we called this shutdown—there is a man working outside that don't even belong to the union." So I went over and asked Chuck, "Just who do you mean is that man outside that don't belong to the union?" He said, "You." So I called him a liar. He says he was not, and I said, "Well, you are." I says, "Check your records, you can easily see whether I am union, or not." So this Mr. Cunningham spoke up and he said, "Well, we have checked the records, and we find you are union, but that you are a year and one-half [35] behind in your dues." So I called him a liar, and that was about all I had to say. It was an argument between the shop steward and Mr. Hamilton.

Q. Tell me just what was said between Hamilton and the shop steward? Who was the shop steward?

A. Mr. Crow.

Q. Crow?

A. Crow or Snow. I am not sure.

Q. What was said between them?

A. Well, they insisted that Hamilton give me my check and pay me off. He said, "No, I don't think that is right." He said, "I know that man is union." So they insisted that he pay me off or they wouldn't go back to work.

Q. Who insisted?

A. Well, the union boys. Mr. Feller, Mr. Cunningham and Mr. Crow. They said they wouldn't go back to work until he paid me off. Mr. Hamilton

(Testimony of Virgil Ramey.)

kept insisting that he didn't think it was right; that I had as much right to work as any of [36] them.

\* \* \*

Q. Now, will you take your time and give me the rest of the conversation, that is, what was said by Mr. Cunningham, Mr. Feller, and this individual Crow or Snow, as you identify him, in your presence?

A. Well, Hamilton told him he thought I had as much right to work as anybody.

Q. Who did he tell this to? [37]

A. Well, he was talking to Mr. Feller and Cunningham, and they wouldn't take that. They said, "Well, we won't go to work until he is out of this shed." And he said——

Q. Who said what?

A. Well, they was both talking back and forth. Then Mr. Cunningham said, he said, "Well, would you be willing to put up \$24.00. I can let you go on back to work and leave you alone?" I said, "Well, no, I wouldn't." I says, "In the first place, I haven't got it," but I says, "Why should I pay in a whole year's dues?" So he didn't say anything. He just as much as said, "Well, there you are." Then pretty soon most of them seemed anxious to go back to work, some of the packers, and when I thought they were going to, I decided I would go out and walked right out of the shop and then just as I was going out this shop steward said, "Well, boys," he said, "Come on, let's go on home. Hamil-

(Testimony of Virgil Ramey.)

ton isn't going to do anything about it." So at that time Mr. Pappas came over to Ham, just as I was going out and he says, "I want to talk to you." So I just continued on when he said that. I don't know what conversation they had. A little bit later the machinery started up, so I let down the trailer side and started letting the melons fall into the bin and Mr. Hamilton came up to the door.

Q. How much later was it that Hamilton came there after you had left the shed?

A. I would say maybe fifteen minutes. [38]

Q. Mr. Hamilton came to the door?

A. He walked to the door and called me up there.

Q. Was anybody else present? A. No.

Q. All right. Now state the conversation that occurred at that time between yourself and Mr. Hamilton.

A. Well, he says, "Well, Ramey," he says, "The boys refuse to go back to work until you are off the shed, so you might as well take off." He says, "I will go ahead and pay you for the rest of the day," and he said, "I hope something will develop and you will go back to work over the week end." I said, "O.K. if that is the way it is," "That is the way it has got to be," so I went out and got in my car and went to town.

Q. What time of day was that?

A. That was about in the neighborhood of four o'clock.

Q. What time did you normally work on that day if no interruption had taken place?

(Testimony of Virgil Ramey.)

A. Well, I would have possibly gone to five o'clock.

Q. After that did you have any conversation with either Mr. Cunningham, Mr. Feller or Mr. Hamilton?  
A. Yes, with Mr. Hamilton.

Q. When were you talking to Mr. Hamilton?

A. That was the next day, Sunday evening.

Q. Where were you talking to Mr. Hamilton at that time?  
A. On the street at Mendota. [39]

Mr. Burke: That was Sunday evening?

The Witness: Sunday evening.

Q. (By Mr. Magor): Where were you and Mr. Hamilton?

A. It was in Mendota, in front of the restaurant.

Q. Can you recall to the best of your recollection what time of the day it was? Sunday evening?

A. That was along, I would say, between 7:30 and 8:00 o'clock.

Q. Was anybody else present at the time?

A. No, he was by himself.

Q. Would you tell me to the best of your recollection, the conversation that occurred at that time, as to what you had to say and Mr. Hamilton had to say?

A. He asked me if I had seen any of the FTA men. I said, "No, I don't want to." He said, "Well, why don't you go ahead and pay it and get

(Testimony of Virgil Ramey.)

it over with? That way you can come back and go to work." He said, "I know you haven't got the money"; he says, "I would be almost willing to give you that money out of my own pocket to do it." He says, "I wish you would." He says, "You are hot-headed and you didn't mean half of what you said." I said, "No, you are right, but I won't apologize; if there is something to prove I am a liar now, I won't do it." He said, "That would be easiest way just to settle it." I said, "No, I can't do it." So he got in his car and left.

Q. That is all the conversation you had?

A. That is all. [40]

Q. Did you have any conversations after that with Mr. Hamilton? A. Yes.

Q. When was this?

A. I think the next conversation was just a couple of days after that. I went out to the shed.

Q. You went out to the shed? A. Yes.

Q. Do you recall when it was you went out to the shed?

A. I just went out and talked to the carloaders, and Mr. Hamilton said, "Hello, Jack," and he said, "How are you doing?" and I said, "No good." And that is all the conversation then.

Q. Did you go out to the shed after that at all?

A. Yes, I went out one day after that when I got a job over at Murphy's and I was told to go down and see if I am still on the payroll or something like that.

Q. Prior to that time did you go out to the shed

(Testimony of Virgil Ramey.)

with any of the union representatives to see Mr. Hamilton?      A. Yes.

Q. When was this that you went out there?

A. Monday morning.

Q. Monday morning. What Monday are you referring to now?

A. That was August 6, Monday. The 6th.

Q. The last day you worked, then, was on a Friday?      A. Saturday. [41]

Q. Was this the following Monday?

A. The following Monday.

Q. What time of day was it you went to the shed on the following Monday?

A. We got there about seven o'clock.

Q. Seven o'clock. Who was with you at that time?      A. Mr. Gillie and Mr. Crabtree.

Q. And when you say Mr. Gillie, that is the individual sitting behind me?      A. Yes.

Q. Who is a representative of the CIO? Can you tell me who Crabtree is?

A. That gentleman there. He is the CIO representative.

Q. This individual sitting here—right here?

A. Yes.

Q. Do you know of your own knowledge what his position is with the CIO?

A. He is chief business agent, I guess you call it.

Q. You went out to the shed on Monday morning?      A. Yes.



(Testimony of Virgil Ramey.)

Q. Tell me just what occurred when you went out to the shed at that time?

A. Well, we just walked into the shed, and, of course, I don't know if there was any other help, but some of the packers and Mr. Hamilton saw me, and as soon as we came into the shop Mr. [42] Hamilton came over to us and the packers were there in behind their dumps, putting their aprons on. It was just a couple of minutes before work time, and Mr. Hamilton says, "Let's go to work, boys." So then the packers came out from behind their dumps and took their aprons off and stood up in a bunch over there and Mr. Hamilton came over to us and he said, "Well, the boys refuse to work while you are around the shed." So I says, "I am getting off. I don't want to cause any trouble." So I turned and left the shed, and what went on after that I don't know.

Q. You left?           A. I left.

Q. Were you paid on Friday for all of Friday's work day? The day you worked last?

A. Yes, I was paid for that day—for all the day.

Q. What day was that?           A. Saturday.

Q. When did you normally get paid by the company?

A. I don't know whether it was Tuesdays or Wednesdays. I don't remember what the payday were.

Q. It was not Saturday, is that correct?

A. No, I waited until payday for my check, then I went down to get it.

(Testimony of Virgil Ramey.)

Q. And what was the pay check, up to the Saturday or to the end of the pay period? [43]

A. I am not sure on that. He gave me a check, then I think I went out and I had a part of a check coming again, and I asked him for it and he gave me the cash on that, Mr. Hamilton.

Q. Were you paid for Saturday, the last day you worked? A. I was paid for that day, yes.

Q. Were you paid for any days after that?

A. No.

Q. Your normal payday was Tuesday or Wednesday? A. I think so.

Q. I believe you previously testified, when you were talking about one of those conversations, with Mr. Cunningham and Mr. Feller, that you referred to an election, "after the election was over," I believe your testimony was.

A. Yes, that is what I told Chuck. I says, "When the election is over I will pay every penny that I am behind, and which I am supposed to pay, to pay up."

Q. What election were you talking about?

A. I was talking about that National Labor Relations Board election.

Q. You were referring to the National Labor Relations Board's election? A. That is right.

Q. Had the National Labor Relations Board election been held as of that day? [44]

A. No, it had not.

\* \* \*

(Testimony of Virgil Ramey.)

Cross-Examination

By Mr. Burke:

Q. You went to work August 2, did you say?

A. That is right.

Q. On August 2, and this occurred on August 5, is that correct?

A. That is right.

Q. Now, did you know that just prior to that time you went to work a fellow named Jim King on that job had been discharged by the company?

A. I knew, yes.

Q. Did you know that he had been discharged?

A. Yes.

Q. He worked on the same job that you [45] did?

A. Yes.

Q. Did you know that the union representatives had taken that grievance up as an unjust discharge?

A. No, I didn't know that.

Q. Did you know after you were discharged he was returned to work?

A. Yes. [46]

\* \* \*

Q. \* \* \* You started to testify that you later saw Ham several days later and I wasn't quite clear as to when that was. You saw him on Saturday, the last time you worked—you were talking to him that day; then on Monday you saw him again?

A. Talking to him Sunday night.

Q. But you said, I believe, that you talked to him several days later again, that you had gone

(Testimony of Virgil Ramey.)

down to see the carloaders, or something, do you recall that?

A. Yes, I saw him out there and he said, "Hello."

Q. That was after Monday, is that correct? You said you had gotten a job with Murphy in the meantime.

A. That was after Monday.

Q. I believe you said that you went down to see if you were still on the pay roll, I believe, if my recollection is right.

A. That is what I said. I went down to see if my name was on the pay roll.

Q. What is the reason you did that? [48]

A. Well, for instance, they knew what the deal was and they said, "Why don't you go down and see if they have a check for you?"

Q. Was it your idea that they were just going to keep paying you while you were off?

A. They might.

Q. You didn't have any conversation with Mr. Gillie or Mr. Crabtree that you should go down and make sure you were fired, did you?

A. To make sure I was fired?

Q. Yes. That you were not employed, in other words?

A. Well, I was talking to them and they asked me if I had seen Ham. I says, "Yes, I have," and they said, "What did he say?" And I said, "He didn't say anything."

Q. But on Saturday, he told you, I think you

(Testimony of Virgil Ramey.)

said, that he would have to let you go, but that he would pay you for the day, is that right?

A. That is right.

Q. "Would have to let you go?"

A. He said the boys refused to go back to work until I was off the shed, "So I guess I will have to let you go," he says, "you might as well take off."

Q. What made you think when you went back again to inquire if you were still on the pay roll, that you might be? I don't quite follow that. [49]

A. Well, it would give him a chance to put me back to work.

Q. In other words, you were not quite sure if it was final on Saturday?

A. I was quite sure it was final, but I figured that he might see his mistake and give me a chance to go back to work.

Q. Give you a chance to come back? I don't understand. What did Ham mean when you met him on Sunday and he said you were hot-headed? What did he mean?

A. He just meant that Mr. Feller and Mr. Cunningham told them I was at the meeting and didn't mean what I said, and I just wouldn't pay the dues. [50]

\* \* \*

Trial Examiner Spencer: Who was the shop steward?

The Witness: Mr. Crow or Snow, I am not sure.

(Testimony of Virgil Ramey.)

Trial Examiner Spencer: He was employed there at that time, and was he the shop steward?

The Witness: That's right.

Mr. Crow: Crow is the name. [51]

\* \* \*

Q. (By Mr. Gillie): Now, this is just pertaining to the question that Mr. Burke asked you. Did you know at the time that you took this fellow King's place, that he was fired for cause? Did anybody tell you at that time that he had been fired for cause? A. Yes. [53]

\* \* \*

Q. (By Mr. Gillie): You do know that in the contract that was pending at the time there was a clause in such contract that gave management the right to fire people for cause, you know of that provision in the contract?

A. Yes, I know of that.

Q. Referring to the management, when you met agents Crabtree and I believe Dick Perry and myself, when Ham came up to you and asked for you to come up and said for you to get out of the shop because the boys wouldn't work, he was talking directly to you at that time, and I told you to leave the shop rather than cause any more disruption. Do you remember my saying that? A. Yes.

Q. Do you remember my saying in front of you in your presence to Ham Hamilton, "Is this man fired or discharged?" and Hamilton said at the time, "He was neither"? A. I remember.

(Testimony of Virgil Ramey.)

Q. I asked him to give me that in writing and he refused [54] to do so. A. Yes.

Q. And the next time I spoke to you, I told you to go back and you went there for a check on the following payday?

A. You asked me to ask him.

\* \* \*

### Redirect Examination

By Mr. Magor:

Q. What is your best knowledge of the reason that Mr. King was discharged?

A. Well, Mr. Hamilton said that he let some boards slip down on top of the melons—let them slip down into the bin several times that day, so he said, “I let him go.” He says, “You want to come out and dump melons?”

Q. When was it Mr. Hamilton told you about that?

A. That was August 2, about five o'clock in the evening.

Q. What is the basis of your knowledge that the union presented a grievance to the company concerning Mr. King's discharge? The union on your cross-examination here told you the union presented a grievance.

A. I don't quite understand you there.

Mr. Burke: I asked——

Mr. Magor: Just a minute. I will clear [55] that up.

(Testimony of Virgil Ramey.)

Q. (By Mr. Magor): On cross-examination you testified that the union presented a grievance to the company concerning King's discharge, is that your answer?

A. I understand they had quite a disagreement over him being discharged.

Q. What is the basis of your knowledge that there was a disagreement about his being discharged? A. By King saying that.

Q. Who told you?

A. That night that I went to work Mr. Crow and this same man came back, and this man that got discharged was showing him what he got discharged for, and I didn't know who Mr. Crow was then, or what he was, or this man that got discharged, who he was.

Q. Did you know what his name was?

A. No, I didn't. I didn't get his name at that time.

Q. Was Mr. Hamilton there talking with Mr. Crow when this man came up?

A. There was nobody there at that time, but just the two of them.

Q. Is that the only knowledge you have—had at the time?

A. That is all the knowledge I had at that time.

Q. What is the basis of your knowledge that at the time you stopped working for Pappas and Company, that King went back to work? [56]

A. Well, that day I was put off they insisted



(Testimony of Virgil Ramey.)

that Mr. Hamilton putting him back on the same job that I was put off.

Q. Who insisted?

A. Mr. Feller, Mr. Crow, Mr. Cunningham.

\* \* \*

Q. Tell me just exactly what was said at that time concerning King, and who said it?

A. Well, they said that—

Q. Who is “they”? Identify the individual, if you can?

A. Well, I couldn't say for sure which one it was, now. They said—and that might be Mr. Feller or Mr. Cunningham—but they did insist on putting him back on the same job. But Ham says, “No, I won't do it.” He said, “I will put him back to work, but not on that job.” And that is all I know of that.

Q. That is all of the conversation?

A. I didn't know anything more until the following Monday [57] I saw him out there dumping melons.

Q. And this was the same man?

A. The same man, yes.

Q. Is that the man by the name of King?

A. I don't know his last name—I think they called him Jimmie.

Q. You don't know whether the man's name was King or not?

A. No. The man you referred to getting discharged?

(Testimony of Virgil Ramey.)

Q. That was the man I meant. A. No.

Mr. Magor: That is all.

### Recross-Examination

By Mr. Burke:

Q. If my memory serves me, you said when you first went in the company that the fellow driving the tug was going up and down, and when the machinery stopped you asked him why it had stopped, is that approximately correct? Then you walked on into the shop with him—then you heard Mr. Feller saying something about somebody not being a union man, am I correct? A. That is right.

Q. You do not know the stoppage happened to start, do you? You were not there—it was stopped when you got there?

A. That is right. They were all sitting down.

Q. Whether Feller had said anything prior to the time you walked in, you don't know? [58]

A. No.

Q. And that was all over, then you got in an argument with Feller about whether you were or were not a union member? A. That is right.

Q. At that time you did not discuss the King grievance with them at all? A. No.

Q. And this was about two o'clock, was it? And finally when it got to be four or four-thirty they insisted on going back to work, or was that earlier?

A. I would say it was somewhere around in the neighborhood of three o'clock, when the machinery

(Testimony of Virgil Ramey.)

stopped. Somewhere in there, I couldn't say for sure now.

Q. Just a little after you had your conversation with Feller and Crow? A. Yes.

Q. About Hamilton putting King back to work, or was it around the same time?

A. It all happened in the same argument. [59]

\* \* \*

### BOYCE WARD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Magor:

\* \* \*

Q. And directing your attention now to the season of 1950, were you employed by Pappas and Company at that time? A. Yes.

Q. Did you know Virgil Ramey? A. Yes.

Q. Was Virgil Ramey working for the company at that time? A. Yes.

Q. What was your job or occupation during the month of August, 1950, with Pappas and Company? A. I was a lidder.

Q. As a lidder where did you work?

A. Well, I worked inside the shed.

Q. That is the packing shed? A. Yes.

Q. Was that at Mendota, California?

A. That is right.

(Testimony of Boyce Ward.)

Q. Do you know Duke Cunningham?

A. Yes.

Q. Do you know Chuck Feller? A. Yes.

Q. Directing your attention to August 5, 1950, did you hear any conversation that day between Virgil Ramey, Duke Cunningham and Chuck Feller? [61]

A. Yes, I did.

\* \* \*

Q. (By Mr. Magor): Who was present at the time? A. Well, the whole crew was present.

Q. Who was present besides the crew?

A. Well, that was Chuck Feller and Duke, and Ham, the foreman, and George was there—George Pappas. [62]

Q. Can you tell me to the best of your recollection at that time what was said, and who said it?

A. Well, whenever I first walked out, I think that Ramey was speaking. He said that he had told these guys that he would pay his dues as soon as they had the election, and he found out who was going to represent the workers, then he would pay his dues to the one that won. Then Duke Cunningham said that he couldn't find where Ramey had ever belonged to the union, and Ramey told him he was a liar. Then he got mad, he said he had belonged to the union and he had worked for many years down here at Richman's, and a little bit more talk I don't remember exactly what it was, and then Duke says that he had looked up in the records, and found that Ramey was a little over a year

(Testimony of Boyce Ward.)

behind in his dues, or over a year behind, and Ramey said that that was not true, that he was just two quarters behind in his dues, and then they argued over that a while and I don't remember exactly what was said, and then Duke said, "Well, if you have got \$24.00, you can go back to work." And Ramey said, "Well, I don't have \$24.00." And then I think he asked Duke if he would loan him \$24.00. He was pretty mad, and that is about all I remember. I walked off about that time.

Q. That is all the conversation there was. How long were you present during this conversation, and about how many minutes, if you can recall?

A. Oh, around five or ten minutes, I would [63] say.

\* \* \*

### Redirect Examination

By Mr. Magor:

Q. Did you go back to work at all that day?

A. Yes.

Q. When did you go back to work?

A. Well, it was—it seems to me it was over thirty minutes, it might have been longer.

Q. Did the packers go back to work?

A. Yes.

\* \* \*

(Testimony of Boyce Ward.)

### Recross-Examination

By Mr. Burke:

Q. Did you know King that was on that same job that Ramey had? A. Yes.

Q. You knew that he had been discharged?

A. Yes.

Q. When you went back did you notice whether he was working, anyway, or not?

A. I don't remember whether he did or didn't.

Q. Did you subsequently see him after that at the shed on any later day? [67]

A. The next day he was on the job. [68]

\* \* \*

### JOHN WARKENTINE

a witness called by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

### Direct Examination

By Mr. Magor:

Q. Mr. Warkentine, is there any interchange from the packing shed to the ranches?

A. Very seldom.

Q. Very seldom? A. Yes.

Q. Now, when the packing shed closes down to all of those employees? They cease working?

A. That is true. [69]

\* \* \*

(Testimony of John Warkentine.)

Q. Did you have any contract during the year 1950 with the packing shed employees?

A. Well, we belong to the Western Growers Association, here in Los Angeles, or in Los Angeles, rather.

Q. During the year 1950 were the Western Growers under contract with any labor organization?

A. That would be beyond me. I don't know.

Mr. Burke: We will stipulate there was an agreement, to which Pappas was a party.

Mr. Magor: Is this the one?

Mr. Burke: In the 1950 packing shed agreement.

Mr. Magor: I would like to have this document marked for identification purposes as General Counsel's Exhibit No. 3. [70]

(Whereupon the document above referred to was marked General Counsel's Exhibit No. 3 for Identification.)

Trial Examiner Spencer: It is so marked.

Mr. Magor: I formally offer General Counsel's Exhibit No. 3.

Trial Examiner Spencer: Any objection by anybody?

Mr. Burke: No objection.

Trial Examiner Spencer: Received.

(The document heretofore marked General Counsel's Exhibit No. 3 for Identification was received in evidence.) [71]

## THERON HAMILTON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Magor:

\* \* \*

Q. Were you ever employed by Pappas and Company?      A. Yes.

Q. When were you first employed by that company?      A. In 1947.

Q. And during the year 1950 were you working with Pappas and Company?      A. Yes. [76]

Q. What was your job at that time?

A. Shed foreman.

Q. And as shed foreman, could you hire and fire employees, in the shed?      A. Yes, I could.

Q. Do you know Virgil Ramey?      A. Yes.

Q. Was Virgil Ramey working with them during the month of August, 1950?      A. Yes.

Q. Do you know Duke Cunningham?

A. Yes.

Q. Do you know Chuck Feller?      A. Yes.

Q. Directing your attention to the month of August, 1950, did you have any conversation with either Duke Cunningham or Chuck Feller, or both of them, concerning Ramey?      A. Yes.

Q. When did that conversation occur?

A. What time?

Q. Yes. What date, if you can recall?

A. The first time, as I recall, was either the second or third of August.



(Testimony of Theron Hamilton.)

Q. Was Ramey working for the company at that time?      A. Yes. [77]

Q. And where were you talking to the gentleman?

A. It was on the shed.

Q. Who were you talking to?

A. Talking to Feller and Cunningham.

Q. Do you recall what time of day it was?

A. It was in the afternoon, to the best of my knowledge, shortly after lunch.

Q. Was anybody else present at the time?

A. At that time there wasn't—just the three of us.

Q. Just the three of you. Will you tell me to the best of your recollection what conversation occurred at that time?

A. Well, they just wanted to know whether I had Ramey working there. Feller says he was not a union member and asked me why I didn't get rid of him. During the course of the conversation they suggested that I put this James Yokas back to work and just let Ramey go. The men told me that the union insisted that I put him back to work, and I had no place for him. That was the end of that conversation. I wouldn't do it.

Q. That was all the conversation at that time?

A. Well, that was about the extent of that.

Q. Now, did you have any conversations with either Feller or Cunningham after that?

A. Yes, whenever we had this labor trouble.

Q. What labor trouble are you speaking of?

A. I think it was the fourth—maybe a couple of

(Testimony of Theron Hamilton.)

days later, [78] whenever it is, and Chuck Feller and I were talking over in regard to Ramey.

Q. Just a couple of days later, is that right?

A. Yes, one or two days. I don't know.

Q. Where were you talking with Feller at that time?

A. On the shed.

Q. Do you recall what time of day it was?

A. It must have been along in the middle of the afternoon.

Q. Was anybody else present besides you?

A. At the time Chuck and I was alone.

\* \* \*

Q. (By Mr. Magor): Now, will you give the conversation that occurred at that time?

A. Chuck asked me if I wouldn't get rid of this Ramey, and I told him no that I couldn't do it on account of the National [79] Labor Relations Board. I figured it would be a violation of it, I didn't want to discharge him on that account because he didn't want to join the union. I went on and had a conversation with Chuck, and Chuck told me at the time they were going down there they were going to insist on a closed shop, and I told them if they did insist on a closed shop to please not to use my shed for an example. I mean, if he was going to take them all, then I didn't expect to be excluded, but not to use mine as an example, so we shook hands and parted like that. That is the way it was settled. I saw the carloaders needed some information on loading the cars up and about that time Duke Cunningham came in and I

(Testimony of Theron Hamilton.)

excused myself and Duke was pretty mad, I assumed about this Ramey—presumably had a telephone call from the Imperial Valley, checking on his dues. I excused myself and went over to straighten the car-loaders out. In the meantime Cunningham went down through, back to the packers, and Herschel Crow and Chuck was going from packer to packer, talking to them, and then they walked out.

Q. Who walked out?           A. The packers.

Q. You mean they stopped working?

A. Yes, they stopped working and went to the back end of the shed away off, and none of the car-loaders knew about it. Mr. Pappas came out and he asked me why they were going unless it was over that Ramey, and he walked down—Mr. Pappas [80] asked me then again if they were going down to hold a union meeting on the shed; he didn't think it was the place to hold union meetings; they could go out behind and hold it. So finally, the conversation got around to finding out what they wanted. Duke made the formal demands, as to discharging Ramey and putting a union man back to work in his place.

Q. What else was said?

A. Well, I told them I couldn't do it on account of the National Labor Relations Board, and Duke kept insisting as of now it is going to be a closed shop from here on out, and Ramey was called in; he came in about that time and Duke and Chuck and Ramey they almost got into a big fight——

Q. Just tell me what was said when Ramey came in, everything that happened.

(Testimony of Theron Hamilton.)

A. Well, when Ramey came in he asked me what the trouble was if it was over him. I told him it was, and then I think Duke asked him if he had his dues paid up, I think he said that he did——

Trial Examiner Spencer: That is, Duke asked Ramey?

Witness: Yes, and I believe Duke told him he was \$24.00 short, or needed to deposit \$24.00, or owed \$24.00 or something, anyhow \$24.00 entered into it, and asked him if he would be willing to post \$24.00? So Ramey told him no, so finally when I got the melons packed I asked Duke if he would post that \$24.00, if he would let Ramey go back to work, and Duke said, [81] “no,” he said, “You let him post the \$24.00,” and they would investigate and they would let me know Monday whether he got in back to work.

Trial Examiner Spencer: Would you explain what you mean by posting?

Witness: Well, it was for his union dues.

Trial Examiner Spencer: What do you mean by posting it?

Witness: I think the dues—I don't know, I think it is \$5.00 a half, I think it would have paid the year's dues.

Trial Examiner Spencer: I just wanted to be sure it would be understood by those reading the record.

Q. (By Mr. Magor): What did Cunningham say then?

A. He wouldn't let him go back to work, and then he walked over there——

(Testimony of Theron Hamilton.)

Q. So what was said? Just tell me all that happened, right then and by whom? Were the packers working at that time?

A. No, the packers were sitting out. I finally told Ramey then to go on and take the afternoon off and I would pay him for that afternoon. In the meantime, we would try to get it settled. I asked the packers and Duke if that was satisfactory if they would go back to work and finish up, and they said "yes," so Ramey left and we went back to work and finished up the day.

Q. After Ramey left the packers go back to work?

A. Yes, they went back to work and finished up the day, and [82] I think I told Ramey maybe we could get it straightened out over the week end, but they still would not agree to it, so——

Q. Wait a minute. You told Ramey what? What did you have to say to him that day, when you let him go?

A. I told him that I would pay him for that afternoon and in the meantime we would try to get hold of Duke and Chuck and try to see if we couldn't get them to let him go back to work.

Q. Was that all the conversation you had with Ramey?      A. Yes.

Q. And did you see Cunningham or Feller after that?      A. I see Feller.

Q. When did you see Feller?

A. Sunday afternoon.

(Testimony of Theron Hamilton.)

Q. And this took place on Saturday?

A. Yes.

Q. And that would be the following Sunday?

A. That is right.

Q. Where were you and Feller at that time?

A. In the Sunset Cafe.

Q. Where is the Sunset Cafe located?

A. It is in the valley.

Q. What time was it to the best of your recollection?

A. I think it was three or between two and three o'clock in the afternoon. [83]

Q. Who was present?

A. Just Chuck and I were sitting there. There were some more people were sitting there, but I don't know who they were.

Q. The Chuck you are referring to is Chuck Feller?      A. Chuck Feller.

Q. Give me the discussion at that time, the conversation.

A. Well, it was in regards to Ramey, and I asked him why he wouldn't let him go back to work and he said, "Well, he just is not a union member, and they just don't want him," he says, "He is no good for the union, and they just don't want him." I don't remember the exact conversation that went on but it was just in regards to that, and it was just a refusal of not letting him to go back to work, and so Monday morning—

Q. Was that all the conversation?

A. Well, about all I can recall.

(Testimony of Theron Hamilton.)

Q. What happened Monday morning?

A. Well, Monday morning they came back down.

Q. Who came back down?

A. The crew came back at eight o'clock to go to work. Ramey was present and the crew refused to go to work if he was on the job so Ramey told me "If they don't want to work, well, I will leave, I will leave the shed, I won't cause any trouble." Then McNamara and Crabtree and one other fellow from our shed, and Herschel Crow came up and told me that he didn't want to work while they were on the shed, so I told Herschel to tell [84] them to get off, and he said it wasn't his duty to tell them to get off, that it was mine, so I told him they was pretty big, I didn't know, so I went over and I told Mr. McNamara and they immediately left the shop.

Q. Can you identify Mr. McNamara for the record?      A. Pardon?

Q. Can you identify Mr. McNamara? Do you have any personal knowledge of what his job is?

A. Well, other than what he told me he was.

Q. What did he tell you he was?

A. He was the representative for the CIO.

Q. And Mr. Crabtree was present, you say?

A. That is right.

Q. And he is a representative of the CIO?

A. He is a representative of the CIO.

Q. You spoke of Mr. Crow. What is Mr. Crow's position?

(Testimony of Theron Hamilton.)

A. Mr. Crow is the shop steward for the shed.

Q. And was Mr. Crow a member of the FTA?

A. Yes.

Q. During the season of 1950, or any time during the time you were working as shed foreman for Pappas and Company, was a union authorization election held for Pappas and Company by the National Labor Relations Board? A. No. [85]

\* \* \*

### Cross-Examination

By Mr. Burke:

\* \* \*

Q. Were you operating Sunday?

A. No. [86]

\* \* \*

Q. You said this fellow, named—we have been speaking of him as Jim King, was doing the same job as— A. Caine?

Q. Was doing the same job—or King, rather.

A. No, that was not his name. I had no King working for me.

Q. What was the fellow's name that was around at that time that you discharged?

A. Yokas.

Q. When did anybody first discuss the discharge of Yokas with you?

A. It was on a—I believe to the best of my knowledge, it was on about the 2nd—after I fired Yokas.

Q. What time was that?

A. Well, I would say roughly to the best of my



(Testimony of Theron Hamilton.)

knowledge, about three or three-thirty in the afternoon.

Q. You fired him at that time? A. Yes.

Q. When did you put Ramey on his job?

A. After lunch, when *we back* to work after I made a repair, that would be about six, would it? Or five?

A. From five-thirty to six. I don't remember any time, I [87] would say it was six o'clock.

Q. How did you happen to have Ramey available?

A. I was looking for someone to take his place, and I ran into Ramey.

Q. And you had arranged with Ramey to come out before you fired Yokas? A. No.

Q. No? Just happened to be in the shed?

A. I had made arrangements with Ramey to go to work loading Persians and—when the Persians started.

Q. And when you fired Yokas you told him to be there?

A. He was the first man that I seen that wanted to work, so I hired him. [88]

\* \* \*

Q. Isn't it the fact of the matter that you did reinstate Yokas?

A. Yes, I did that just to try to get the crew settled back and thinking they would let me go ahead and use Ramey and maybe we could go ahead and get the thing going. [92]

\* \* \*

(Testimony of Theron Hamilton.)

Q. On Saturday, that is the day I am talking about, as the result of that stoppage, he was reinstated on the job, isn't that true?

A. No, not then. I *put back* to work on Monday, with the reservations in my mind that if I put him back to work they more or less guaranteed me that he would not be neglectful and let any more culls go through, so I took the chance and put him back to work, thinking they would let Ramey go to work and finish that. You see, the point is, I had promised him a job unloading Persians, which deal would start in about ten days, and tried to get the thing peaceably started again by reinstating Yokas. [93]

\* \* \*

Q. And on the 5th did the union representatives insist that Yokas be reinstated?

A. No, whenever we had this trouble, whenever they insisted that Ramey leave the property.

Q. On August 3, you gave the job to Ramey and they insisted that he come back?

A. No, I voluntarily put him back myself.

Q. Nobody asked you to put him back, no union representative?

A. Yes, they asked me to put Yokas back to work and tell Ramey that the union forced me to put Yokas back to work, then there would be no more trouble.

Q. Isn't it true that you raised the question that if you put Yokas back to work and let Ramey go that you would be in [96] trouble with the Labor Board?

A. If I did what?

(Testimony of Theron Hamilton.)

Q. If you put Yokas back and let Ramey go, that you would get in trouble with the Labor Board?

A. Well, I put somebody else on the job that afternoon.

Q. That Saturday afternoon? To finish up?

A. Yes.

Q. Well, somebody else was there.

A. And then my idea of putting Yokas back to work, I talked to Yokas Sunday afternoon myself, and I asked him if he would come back and go to work, thinking maybe this whole thing would be settled and maybe they would let Ramey go back and work on the Persians, when the Persians started. They hadn't started at that time, but he was supposed to do the Persians in a few days, and I thought by putting Yokas back to work that they would let him go ahead and finish and we would have no more trouble, but as far as putting Yokas back through demands, that was not the reason for putting Yokas back. [97]

\* \* \*

Q. You had about how many workers in the shed when you were operating there?

A. Roughly about sixty when we are operating on cantaloupes. [99]

\* \* \*

Q. You were never called upon to fire anyone for failure to pay his dues, were you?

A. Not until this incident.

Q. Isn't it true that you offered to pay Ramey's dues?

(Testimony of Theron Hamilton.)

A. No. I offered to loan Ramey the money if he wanted to pay them.

Q. Ramey wanted to go to work on that day and isn't it true that they said he can go to work and then pay us?

A. They said they would——

Q. Look into it?

A. If he would deposit the \$24.00 that they would investigate it and let us know Monday. [100]

\* \* \*

Q. I think the record will show that you said you asked union organizer Cunningham that if that was done could Ramey go to work, and Cunningham said "No, they would investigate it."

A. Yes, that is right. Of course I didn't ask Duke about lending him the money. I asked Duke if he paid his dues if he could go back to work and Duke said "no."

Q. The answer was no at that point.

A. That he would have to investigate and check on him and let us know Monday. [101]

\* \* \*

Mr. Magor: Can we reach a stipulation about the United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO, is a labor organization within the meaning of the Act?

Trial Examiner Spencer: Is it so agreed? I hear no dissent. I believe Mr. Burke is nodding that he will so stipulate.

(Testimony of Theron Hamilton.)

Mr. Magor: I think the charging party will also stipulate.

Mr. Gillie: That is true.

Mr. Magor: General Counsel will accept the stipulation.

Can it also be stipulated that the Fresh Fruit and Vegetable Workers Union 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, is a labor organization within the meaning of the Act?

Trial Examiner Spencer: So stipulate?

Mr. Burke: Yes.

Mr. Gillie: I will stipulate that it was. I mean it has changed hands.

Trial Examiner Spencer: Mr. Gillie, are you willing to stipulate that it is a labor organization within the meaning of the Act?

Mr. Gillie: Yes.

Mr. Magor: General Counsel will accept the stipulation. General Counsel will rest his case in chief. [103]

\* \* \*

Trial Examiner Spencer: And is it agreed that there has been no union shop election among these employees affected here?

Mr. Magor: That was Mr. Hamilton's testimony.

Trial Examiner Spencer: Yes. Is there any dispute about that fact?

Mr. Burke: No, not at all.

\* \* \*

## HERSCHEL CROW

a witness called by and on behalf of the Respondent Food, Tobacco, Agricultural and Allied Workers of America, being first duly sworn, was examined and testified as follows: [104]

\* \* \*

## Cross-Examination

By Mr. Magor:

\* \* \*

Q. When was the man discharged?

A. Well, I believe the date would show there.

Q. Was it the same date that Mr. Ramey went to work?

A. When he first went to work, I guess.

Q. Then Mr. Ramey went to work on August 2?

A. Yes.

Q. And you had this conversation with Mr. Hamilton on August 3?      A. Yes.

Q. Did you work August 4?

A. Did I work on August 4? Yes, I believe we did.

Q. And August 5th was Saturday, is that correct?

A. Yes, we worked every day that week, I am sure.

Q. The work stoppage did not commence until August 5, is that correct?      A. Yes.      [117]

\* \* \*

Certificate

This is to certify that the attached proceedings before the National Labor Relations Board for the 20th Region in the matter of: Pappas and Company, et al., and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, C.I.O., et al., Case No. 20-CA-493, etc., El Centro, California. February 8, 1951, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

**ACME REPORTING  
COMPANY,  
Official Reporters.**

**By /s/ E. L. DRUMMOND,  
Field Reporter.**

**Received February 23, 1951.**

In the United States Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

PAPPAS AND COMPANY and FRESH FRUIT  
AND VEGETABLE WORKERS UNION,  
LOCAL 78, and FOOD, TOBACCO, AGRI-  
CULTURAL AND ALLIED WORKERS  
UNION OF AMERICA,

Respondents.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled “In the Matter of Pappas and Company and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO,” the same being known as Case No. 20-CA-493; and “In the Matter of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO,” Case No. 20-CB-159 before said Board, such transcript



including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating William E. Spencer Trial Examiner for the National Labor Relations Board, dated February 8, 1951.

2. Stenographic transcript of testimony taken before Trial Examiner Spencer on February 8, 1951, together with all exhibits introduced in evidence.

3. Copy of Trial Examiner Spencer's Intermediate Report and Recommended Order, dated March 5, 1951, (annexed to item 10 hereof); Order transferring cases to the Board, dated March 5, 1951, together with affidavit of service and United States Post Office return receipts thereof.

4. General Counsel's telegram, dated March 22, 1951, requesting extension of time for filing exceptions.

5. Copy of Board's telegram, dated March 22, 1951, granting all parties extension of time for filing exceptions and briefs.

6. Fresh Fruit and Vegetable Workers Union Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America (hereinafter called Respondent Union) telegram, dated April 4, 1951, requesting further extension of time to file exceptions and briefs.

7. Copies of Board's telegrams, dated April 4 and April 5, 1951, respectively, granting all parties extension of time to file exceptions and briefs.

8. General Counsel's exceptions to the Intermediate Report received April 5, 1951.

9. Copy of Executive Secretary's letter, dated April 18, 1951, to Respondent Union advising Board will not consider said Respondent Union's exceptions to the Intermediate Report.\*

10. Copy of Decision and Order issued by the National Labor Relations Board on June 15, 1951, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 27th day of June, 1952.

[Seal]      /s/ LOUIS R. BECKER,

Executive Secretary,  
National Labor Relations  
Board.

---

\*Copy of rejected exceptions attached to this item in Volume I.

[Endorsed]: No. 13444. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Pappas and Company and Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed June 30, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

---

[Title of Court of Appeals and Cause.]

**PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD**

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Pappas and Company, (hereinafter called Respondent Company), its officers, agents, successors, and assigns and Respondent, Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of

America (hereinafter called Respondent Union), its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said Order is known upon the records of the Board as "In the Matter of Pappas and Company and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO," Case No. 20-CA-493; and "In the Matter of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO," Case No. 20-CB-159.

In support of this petition the Board respectfully shows:

(1) Respondent Company is a California corporation engaged in business in the State of California and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on June 15, 1951, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors, and assigns; and Respondent Union, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof

postpaid, bearing Government frank, by registered mail, to Respondents' representatives.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and Requiring Respondent Company, its officers, agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns to comply therewith.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel,  
National Labor Relations  
Board.

Dated at Washington, D. C., this 27th day of June, 1952.

[Endorsed]: Filed June 30, 1952.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, petitioner herein, and pursuant to Rule 19 (6) of the rules of this Court, files this statement of points upon which it intends to rely in the above-entitled proceeding, and this designation of parts of the record necessary for the consideration thereof:

I.

Statement of Points

1. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent Pappas and Company discharged employee Virgil E. Ramey in violation of Section 8 (a) (3) and 8 (a) (1) of the National Labor Relations Act, as amended.

2. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, in violation of Sections 8 (b) (1) (A) and 8 (b) (2) of the National Labor Relations Act, as amended, attempted to cause and caused respondent Pappas and Company unlawfully to discriminate against employee Virgil E. Ramey.

3. The Board's order is valid and proper under the National Labor Relations Act, as amended.

\* \* \*

Dated at Washington, D. C., this 27th day of June, 1952.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel,  
National Labor Relations  
Board.

[Endorsed]: Filed June 30, 1952.

---

ORDER TO SHOW CAUSE

(July 8, 1952)

United States of America—ss.

The President of the United States of America

To: Fresh Fruit & Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America, 656 East Market St., Salinas, California, and United Fresh Fruit & Vegetable Workers, Local Industrial Union 78, CIO, Att: Mr. H. L. McNamara, 5162 Alisal, Salinas, Calif.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 30th day of June, 1952, a petition of the National Labor Relations Board for enforcement of its order entered

on June 15, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Pappas and Co., and United Fresh Fruit & Vegetable Workers Local Ind. Union 78, CIO, Case No. 20-CA-493 and In the Matter of Fresh Fruit & Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America and United Fresh Fruit & Vegetable Workers Local Industrial Union 78, CIO, Case No. 20-CB-159,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 30th day of June in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Returns on Service of Writ attached.

Received July 2, 1952.

[Endorsed]: Filed July 8, 1952.



ORDER TO SHOW CAUSE

(July 14, 1952)

United States of America—ss.

The President of the United States of America

To: Distributive, Processing and Office Workers of  
America, Att.: Mr. Arthur Osman, 13 Astor  
Place, New York, N.Y.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 30th day of June, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on June 15, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Pappas and Co., & United Fresh Fruit & Vegetable Workers Local Industrial Union 78, CIO, Case No. 20-CA-493, and In the Matter of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America and United Fresh Fruit & Vegetable Workers Local Industrial Union 78, CIO, Case No. 20-CB-159,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed

in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 30th day of June in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal]     /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed July 14, 1952.

ORDER TO SHOW CAUSE

(Aug. 6, 1952)

United States of America—ss.

The President of the United States of America  
To: Pappas and Company, Mendota, California;  
Fresh Fruit and Vegetable Workers Union,  
Local 78 and Food, Tobacco, Agricultural and  
Allied Workers Union of America, Att.:  
Messrs. Robert H. Burke and Chuck Ervin,  
P.O. Box 1678, El Centro, Cal., and United  
Fresh Fruit & Vegetable Workers, Local Ind.  
Union 78, CIO, Att.: Mr. T. F. Flynn, 1010 S.  
Broadway, Los Angeles, Calif.

**Greeting:**

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 30th day of June, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on June 15, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Pappas and Company and United Fresh Fruit and Vegetable Workers Local Industrial Union, 78, CIO, Case No. 20-CA-493 and In the Matter of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America and United Fresh Fruit and Vegetable Workers Local Industrial Union 78, CIO, Case No. 20-CB-159,”

and for entry of a decree by the United States

Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 30th day of June in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Returns on Service of Writ attached.

Received July 7, 1952.

[Endorsed]: Filed August 6, 1952.

---

[Title of Court of Appeals and Cause.]

ANSWER OF PAPPAS & COMPANY TO PETI-  
TION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD AND REQUEST FOR  
REVIEW OF, AND TO SET ASIDE SAID  
ORDER

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now the respondent Pappas & Company,

herein called the Company, and appearing for itself alone and not for any other person, firm or corporation, in answer to the Petition for Enforcement of an Order of the National Labor Relations Board and in support of its request for review of, and to set aside the said order, admits, denies and alleges as follows:

1. Answering the allegations contained in Paragraph 1 of the Petition for Enforcement of the said Order, the Company admits that it is a California corporation engaged in business in the State of California; admits that the respondent union is a labor organization within this judicial circuit; and admits that this court has jurisdiction of the within action.

2. Admits the allegations contained in Paragraph 2 of the Petition for Enforcement of the said Order.

3. Admits the allegations of Paragraph 3 of the Petition for Enforcement of said Order.

4. Denies that at any time mentioned in the petition, or at any other time, the Board had jurisdiction over the Company, its officers, agents, successors or assigns and because of the Board's lack of jurisdiction, the Company avers that the proceedings had before the Board, the findings of fact, conclusions of law, and order of the Board were and are in all respects invalid and improper under the act.

5. Denies the wrongful, or any discharge of Virgil E. Ramey as found by the Board and avers

that the termination of the employment of the said Virgil E. Ramey was by his own act and was not induced by the activities of the Company, its officers, agents, successors, assigns or by any person or persons over whom the Company had control.

6. Denies that there has been any violation by this respondent company of any provisions of the Labor Management Relations Act, 1947, 61 Stat. 146, 29 U.S.C., Section 141, et seq.

Wherefore, having answered each and every allegation contained in the said Petition for Enforcement of an Order of the National Labor Relations Board, the Company requests that this honorable court deny the petitioner's prayer that the said order be enforced. Further answering, the Company, pursuant to Section 10 (f) of the National Labor Relations Act, respectfully requests this honorable court for review of, and to set aside the said order.

7. This court has jurisdiction of this proceeding pursuant to the provisions of Section 10 (f) of the National Labor Relations Act, 49 Stat. 452, 29 U.S.C., Section 151, et seq., as amended by the Labor Management Relations Act, 1947, 61 Stat. 146, 29 U.S.C., Section 141, et seq. The nature of the proceeding as to which review is sought is as follows:

(a) On November 30, 1950, the regional director of the National Labor Relations Board, 821 Market Street, San Francisco 3, California, issued a consolidated complaint against the Company (Board

cases No. 20-CA-493 and No. 20-CB-159) alleging that the Company had engaged in an unfair labor practice within the meaning of Section 8 (a) (1) of the act. The complaint was based on a charge filed on November 28, 1950, by United Fresh Fruit and Vegetable Workers Industrial Union, Local 78 C.I.O. The complaint alleged in substance that on or about August 5, 1950, the respondent discharged Virgil E. Ramey at the request of Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America because the said Virgil E. Ramey was not a member in good standing in the said union, and alleged that by such acts the respondent had interfered with, restrained and coerced its employees in violation of Section 7 of the act.

(b) Pursuant to notice, a hearing was held on February 8, 1951, in El Centro, California, before a trial examiner designated by the Board. In March, 1951, the trial examiner issued an Intermediate Report and Recommended Order in which he concluded that the respondent company did not discriminate in regard to the hire and tenure of employment of Virgil E. Ramey, and did not interfere with, restrain and coerce its employees in the exercise of their rights under Section 7 of the act; but concluded that the respondent Fresh Fruit and Vegetable Workers Union, Local 78, and Food, Tobacco, Agricultural and Allied Workers Union of America had engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the act by attempting to cause the respondent company to

discriminate against Virgil E. Ramey in violation of Section 8 (a) (3).

(c) On June 15, 1951, the National Labor Relations Board issued its Decision and Order in which it refused to adopt the Intermediate Report and Recommended Order of the trial examiner but instead held that both the Company and the respondent union had jointly discriminated against Virgil E. Ramey in violation of Section 8 (a) (3) and Section 8 (b) (2) of the act.

(d) The Decision and Order complained of herein was rendered by Board members John M. Houston and Paul L. Styles with a dissenting opinion by James J. Reynolds, Jr., on June 15, 1951.

8. The points upon which the Company intends to rely for the relief hereinafter requested are as follows:

(a) Certain material findings of fact upon which the Board predicated its Order are erroneous because they are contrary to the evidence considered as a whole and said findings are unlawful because they are not supported by substantial evidence upon the record considered as a whole.

(b) The conclusions of law upon which the said order is based are contrary to law because they are either unsupported by the findings of fact or predi-



cated upon erroneous findings of fact and are unsupported by the record considered as a whole.

(c) The said order is arbitrary and capricious, constitutes an abuse of discretion and exceeds the powers vested in the Board.

(d) Said order is beyond jurisdiction of the Board because the Board did not have jurisdiction over the Company.

Wherefore, the respondent company prays:

1. That a certified copy hereof be forthwith served according to the law upon the Board.

2. That the said proceedings, findings, conclusions, Decision and Order of the Board be reviewed by this honorable court; that said order be set aside, vacated and annulled in its entirety; and that the Board be ordered to dismiss the complaint against the Company.

3. That this court exercise its jurisdiction and grant to the Company such other and further relief in the premises as the rights and equities of the cause may require and may seem just and proper to this court.

MOSS, LYON & DUNN,

By /s/ ARVIN H. BROWN, JR.,

Attorneys for Respondent,

Pappas & Company.

[Endorsed]: Filed August 9, 1952.

